



Legal Newsletter

Keeping Health Insurance After Losing A Job

Federal law gives an employee the right to keep employer-sponsored health insurance benefits for several months after he or she is no longer working for the employer. This article will explain when employees have that right, and how to use it.

Whether to have health care coverage or other fringe benefits is up to the employer. The law does not require a company or a government agency to have benefits such as health insurance. However, most larger employers do have a health care benefit plan, as a way to attract and keep employees. If a company does have such a plan, then certain federal laws apply to how the plan is administered. One of these laws, known by the abbreviation "COBRA", gives the employee or his covered family members certain rights to keep the insurance, at their own expense, for a certain length of time after the job ends or after coverage would stop for some other reason. This right exists to help workers and their families avoid gaps in coverage between jobs. If an employer has 20 or more employees, and if it offers health care coverage, then the worker or his family can continue the insurance, even though it would otherwise stop for one of the following reasons:

1. The death of the employee.
2. The termination of the employee from the employment.

3. The divorce or separation of the employee from his or her spouse.

4. The employee becoming entitled to Social Security benefits.

5. A child of the employee ceasing to be a dependent.

For example, if the employee dies, that would normally cause the insurance for the whole family to stop. But under this law, the family can continue the insurance coverage, but must pay the premium. The employer is no longer required to pay the premium, but it must offer the insurance to the family. The premium cannot be more than 101% of the cost of the insurance to the employer in the group plan. This is generally less than the cost of an individual policy.

If the insurance would otherwise stop because of the employee being laid off or terminated, then the employee can continue the insurance. However, this right is not available if the employee was terminated for his own "gross misconduct".

The length of time that the employee or his dependents can buy the continued coverage is 18 months. However, in some cases, it can be longer. If coverage is lost because of death, or divorce, or disability, there can be 36 months of additional coverage after the event. Also, if there is a termination of employment and then, during

the first 18 months after termination there is another event, such as death, divorce or disability, then there can also be a total of 36 months of coverage.

The law also requires the employer or its insurance company or plan administrator to give the employee or his dependents a written notice of their right to continue the insurance coverage. The employer is to inform the employee about it when he or she first becomes covered by the plan, and again when one of the events listed above happens. When one of these events happens, the worker must be given another notice, in writing, of the right to continue the coverage. The worker or family then has 60 days to decide whether to buy the continued coverage. This 60 days runs from the event (on the list above), or from when the employer or insurance company gives the notice, whichever is later. If the employer or insurance company fails to give the notice of the right to continue coverage, then the time to decide whether to buy the coverage may be extended, and the company may have to pay penalties.

Mettler & LeCuyer, P.C., is a law firm serving the Navajo Reservation area from its office at Shiprock, handling primarily personal injury and accident cases, on-the-job injuries, medical claims, disability and insurance claims, uranium miners and Social Security. The firm has a branch office in Albuquerque. The office in Shiprock is located on Highway 64, just east of Foutz Trading Co., and is open 9:00a.m. - 4:00p.m. Monday through Thursday.

