

What happens if we fail to provide COBRA notice upon termination?

Q. What kinds of penalties or liability does an employer face if it fails to provide notice of COBRA coverage upon termination of an employee?

A. The Consolidated Omnibus Budget Reconciliation Act (COBRA) gives workers who lose their health benefits the right to choose to continue group health benefits. An employer is subject to COBRA coverage if it sponsors a group health plan and employed more than 20 people on a typical business day in the year prior to the employee's qualifying event (e.g., termination).

A covered employer must provide the terminated employee and his or her dependents who are covered under the employer's health plan an election notice within 14 days of the qualifying event.

Failure to provide the COBRA election notice within the 14-day period can result in a statutory penalty of up to \$100 per day. That penalty can be imposed even if the employer only "technically" violated the requirement and the worker did not suffer any harm because of the delay.

If the employee does suffer harm as a result of the employer's noncompliance, the employee can sue to recover damages for medical claims that would have been covered under the health plan, plus attorneys' fees.

Thus, if the employee does not have health insurance coverage because of the employer's failure to comply with COBRA's requirements and the employee suffers from a catastrophic illness, the employer may be forced to pay a mountain of medical bills.