



Eligibility Requirements for COBRA Premium Assistance for Employees of UW System Institutions

(Revised 4/19/10)

The following topics are outlined in this document:

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- Information about Who is a Non-AEI and the Impact on Eligibility for COBRA Premium Assistance

Employment Requirements – Definition of Assistance Eligible Individual

According to the American Recovery and Reinvestment Act of 2009, as amended, an “Assistance Eligible Individual (AEI)” is a person who is eligible to receive up to an employer-paid 65% premium subsidy for any benefits that were continued through COBRA. An AEI is eligible for premium assistance towards State Group Health Insurance, Anthem DentalBlue, EPIC Excess Dental & Major Medical, VSP Vision and OptumHealth Vision premiums. To be eligible for premium assistance, the person must be a COBRA qualified beneficiary who meets **ALL** of the following requirements:

1. Must have a COBRA continuation coverage election opportunity related to an involuntary termination of employment that occurred at some time from September 1, 2008 through May 31, 2010; AND
2. Must elect COBRA coverage related to an involuntary termination of employment that occurs at some time from September 1, 2008 and May 31, 2010. COBRA coverage can be effective after May 31, 2010 but the eligibility for COBRA must be related to an involuntary termination of employment on or before May 31, 2010 (an involuntary termination of employment that occurs on or after March 2, 2010 but by May 31, 2010 that follows a qualifying event that was a reduction in hours that occurred at any time from September 1, 2008 and May 31, 2010 is also a qualifying event); AND
3. Must not be eligible for Medicare; AND
4. Must not be eligible for coverage under any other group health plan, such as a plan sponsored by another employer or by a spouse, domestic partner or parent’s employer. Once you become eligible for other group health insurance, you are eligible to continue your benefits through COBRA provisions, but you are no longer eligible to receive COBRA premium assistance towards the premium of any of the continued benefits.

COBRA eligibility due to a reduction in hours: An “Assistance Eligible Individual” also includes anyone who experienced the qualifying event of a reduction in hours (that caused the employee to lose eligibility for insurance) between September 1, 2008 and May 31, 2010 **and** had an involuntary termination of employment on or after March 2, 2010 but by May 31, 2010.

If you experienced a reduction in hours between September 1, 2008 and May 31, 2010 that caused you to lose eligibility for insurance and you did not elect COBRA at that time (or you elected COBRA but it has since lapsed) **and** you are involuntarily terminated from **all** UW System employment between March 2, 2010 and May 31, 2010, you are eligible to elect COBRA coverage within 60 days of your termination date and you may be eligible for

COBRA premium assistance. If you elected COBRA when coverage was first lost due to a reduction in hours, you may be eligible for COBRA premium assistance for COBRA coverage continued after your termination date.

The most common occurrence of an employee who would lose eligibility for insurance due to a reduction in hours is someone employed in a Student Assistant, Employee-in-Training or Short –Term Academic position (not covered by the Wisconsin Retirement System) whose appointment percentage drops below the minimum FTE threshold for benefit eligibility. An employee does have the option to elect COBRA in this situation. If the employee did not elect COBRA and the reduction in hours occurred between September 1, 2008 and May 31, 2010 and the employee involuntarily terminated all UW System employment on or before March 2, 2010 but by May 31, 2010, the employee is given a 60 day COBRA enrollment window from the termination date.

Definition of a Qualified Beneficiary – employees and dependents eligible for COBRA premium assistance

Per the Department of Labor (DOL), a qualified beneficiary generally is an individual covered by a group health plan on the day before a qualifying event who is an employee, the employee's spouse, or an employee's dependent child. In certain cases, a retired employee, the retired employee's spouse, and the retired employee's dependent children may be qualified beneficiaries. In addition, any child born to or placed for adoption with a covered employee during the period of COBRA coverage is considered a qualified beneficiary. Agents, independent contractors, and directors who participate in the group health plan may also be qualified beneficiaries. For detailed information about who IS NOT a qualified beneficiary and how to determine the COBRA premium assistance amount for employees who continue coverage with a non-assistance eligible individual(s) on their plan, see pages 7-8.

Definition of Involuntary Termination

Per the IRS Notice 2009-27, [*Premium Assistance for COBRA Benefits*](#), the following circumstances constitute an involuntary termination for the purposes of the definition of an assistance eligible individual:

An involuntary termination means a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services. An involuntary termination may include the employer's failure to renew a contract at the time the contract expires, if the employee was willing and able to execute a new contract providing terms and conditions similar to those in the expiring contract and to continue providing the services. In addition, an employee-initiated termination from employment constitutes an involuntary termination from employment for purposes of the premium reduction if the termination from employment constitutes a termination for good reason due to employer action that causes a material negative change in the employment relationship for the employee.

Involuntary termination is the involuntary termination of employment, not the involuntary termination of health coverage. Thus, qualifying events other than an involuntary termination, such as divorce or a dependent child ceasing to be a dependent child under the generally applicable requirements of the plan (such as loss of dependent status due to aging out of eligibility), are not involuntary terminations qualifying an individual for the premium reduction. In addition, involuntary termination does not include the death of an employee or absence from work due to illness or disability.

The determination of whether a termination is involuntary is based on all the facts and circumstances. For example, if a termination is designated as voluntary or as a resignation, but the facts and circumstances indicate that, absent such voluntary termination, the employer would have terminated the employee's services, and that the employee had knowledge that the employee would be terminated, the termination is involuntary.

Q&A Regarding Involuntary Terminations

The IRS also provided the answers to the following questions related to an involuntary termination:

Does an involuntary termination include a lay-off period with a right of recall or a temporary furlough period?

Yes. An involuntary reduction to zero hours, such as a lay-off, furlough, or other suspension of employment, resulting in a loss of health coverage is an involuntary termination for purposes of the premium reduction.

Does an involuntary termination include a reduction in hours?

Generally no. If the reduction in hours is not a reduction to zero, the mere reduction in hours is not an involuntary termination. However, an employee's voluntary termination in response to an employer-imposed reduction in hours may be an involuntary termination if the reduction in hours is a material negative change in the employment relationship for the employee.

Does involuntary termination include an employer's action to end an individual's employment while the individual is absent from work due to illness or disability?

Yes. Involuntary termination occurs when the employer takes action to end the individual's employment status (but mere absence from work due to illness or disability before the employer has taken action to end the individual's employment status is not an involuntary termination).

Does an involuntary termination include retirement?

If the facts and circumstances indicate that, absent retirement, the employer would have terminated the employee's services, and the employee had knowledge that the employee would be terminated; the retirement is an involuntary termination.

Does involuntary termination include involuntary termination for cause?

Yes. However, for purposes of Federal COBRA, if the termination of employment is due to gross misconduct of the employee, the termination is not a qualifying event and the employee and other family members losing health coverage by reason of the employee's termination of employment are not eligible for COBRA continuation coverage.

Does an involuntary termination include a resignation as the result of a material change in the geographic location of employment for the employee?

Yes.

Does an involuntary termination include a work stoppage as the result of a strike initiated by employees or their representatives?

No. However, a lockout initiated by the employer is an involuntary termination.

Does an involuntary termination include a termination elected by the employee in return for a severance package (a "buy-out") where the employer indicates that after the offer period for the severance package, a certain number of remaining employees in the employee's group will be terminated?

Yes.

Termination Types & Eligibility for COBRA Premium Assistance

Types of Terminations ELIGIBLE for COBRA Premium Assistance- any involuntary termination including, but not limited to:

- Layoff
- Does not pass probation but there is no gross misconduct
- Loss of funding
- Position is eliminated per the discretion of the employer
- An employee is terminated before the original appointment end date
- A employee fulfills entire contract period but is not appointed to a successive appointment but the employee would be otherwise eligible, willing and able to execute a new contract with similar terms as the expiring contract
- Early retirement in lieu of layoff
- Termination because the employee would not accept reduced hours or appointment
- Forced resignation
- Loss of eligibility to work in a specific appointment (e.g. TA graduates and is no longer eligible to be a TA) – policy change effective September 14, 2009. Applies only to employees eligible for COBRA effective August 1, 2009 and after.

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Types of Terminations NOT ELIGIBLE for COBRA Premium Assistance

- Termination due to gross misconduct
- Voluntary resignation
- Voluntary retirement

Note: Dependents who lose eligibility due to an event other than the employee's involuntary termination may be eligible for COBRA but not for COBRA premium assistance. If a dependent is voluntarily removed from coverage, the dependent is not eligible for COBRA or premium assistance.

Eligibility of Employees in Academic Staff, Faculty & Limited Positions

- **Fixed-Term Terminal, Renewable and Rolling Horizon Academic Staff**
 - If the employer terminates the contract before the stated contract end date, the employee IS eligible for COBRA premium assistance.
 - If the employee works through the end of the contract period and the employer does not renew the contract, the employee is eligible for COBRA premium assistance if the employee was willing and able to execute a new contract providing terms and conditions similar to those in the expiring contract and to continue providing services. **The employer is to assume that the employee would be able to continue working if offered continuing employment unless the employer is notified otherwise by the employee.**
- **Academic Staff in Probationary Period** - If the employer terminates the contract during a probationary period, the employee IS eligible for COBRA premium assistance.
- **Indefinite Term Academic Staff** - If the employer terminates the contract, the employee IS eligible for COBRA premium assistance.
- **Faculty** - If the employer terminates or does not renew the contract, the employee IS eligible for COBRA premium assistance, regardless of probationary status.
- **Limited** - If the employer terminates the contract, the employee IS eligible for COBRA premium assistance.

Neither OSER nor ETF has released official COBRA premium assistance eligibility determinations regarding classified employees so UWSA has interpreted IRS eligibility guidelines as follows for classified employees:

Eligibility of Employees in Classified Positions

- **Classified Permanent** - If the employer terminates the employee, the employee IS eligible for COBRA premium assistance, regardless of probationary status.
- **Classified Project and LTE**
 - If employer terminates employee before original appointment end date, employee is eligible for COBRA premium assistance.
 - If employee works entire length on original appointment, the employee is eligible for premium assistance if the employee was willing and able to execute a new appointment under terms and conditions similar to those in the expiring contract and to continue providing services. **The employer is to assume that the employee would be able to continue working if offered continuing employment unless the employer is notified otherwise by the employee.**

Eligibility of Employees in Student Assistant Positions

- **Receives a stipend** - anyone who works in a Student Assistant title who receives a STIPEND is NOT eligible for COBRA premium assistance. There is no official employer/employee relationship – the payroll system is used to pay the stipend and to allow for payroll deduction of benefits. Ineligible appointment titles include:
 - Advanced Opportunity Fellow
 - Fellow
 - Research assistant
 - Scholar
 - Trainee
- **Program Assistants, Project Assistants and Teaching Assistants**
 - Effective September 14, 2009 for a TA/PA who is eligible for COBRA effective August 1, 2009 and after - If a TA/PA loses eligibility for an appointment through a loss of student eligibility or any other type of loss of eligibility, this is considered involuntary and the employee is eligible for COBRA premium assistance.
 - If a TA/PA is terminated before the end of the appointment (except due to loss of eligibility), the employee IS eligible for COBRA premium assistance.
 - If a TA/PA works through the end of the contract period and the employer does not provide the employee with a subsequent contract, the employee is eligible for premium assistance if the employee was eligible, willing and able to execute a new contract providing terms and conditions similar to those in the expiring contract and to continue providing services. **The employer is to assume that the employee would be able to continue working if offered continuing employment unless the employer is notified otherwise by the employee.**

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Eligibility of Employees in Employees-in-Training Positions

- **Receives a stipend** - anyone who works in an Employee-in-Training title who receives a STIPEND is NOT eligible for COBRA premium assistance. There is no official employer/employee relationship – the payroll system is used to pay the stipend and to allow for payroll deduction of benefits. Ineligible appointment titles include:
 - Graduate Intern/Trainee
 - Postdoctoral Fellow
 - Postdoctoral Trainee
- The following titles should be treated like the TAs and PAs. If the employee loses eligibility for the appointment, this is considered involuntary and the employee is eligible for COBRA premium assistance. Any termination of employment that does not include a voluntary resignation will be eligible for COBRA premium assistance.
 - Intern (non-physician)
 - Postgraduate Trainee 1-7
 - Research Associate
 - Research Intern

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Layoff and Eligibility to Use Sick Leave Credits

- Once you are no longer eligible for the employer contribution towards your health insurance, you have the option to either begin using your sick leave credits to pay for your health insurance OR elect COBRA coverage.
- Your fifteen month COBRA premium assistance eligibility period begins after your health insurance coverage as an active employee ends. Health insurance premiums are paid two months in advance so coverage as an active employee ends approximately two months after termination. You are eligible for an additional three months of employer contribution towards your health insurance because of layoff but these coverage months are not considered “active employee coverage” and these three additional months of coverage count towards the fifteen month COBRA premium assistance eligibility period.
- **If you elect COBRA coverage AFTER you use your sick leave credits**, the credits must be fully exhausted before eligibility for COBRA premium assistance begins. Once the credits are exhausted, you are eligible to elect COBRA coverage. If you only have enough sick leave credits to pay for a partial month of health insurance before you are eligible to enroll in COBRA, you will be required to personally pay the difference between the total premium and the value of sick leave credits during the final month of sick leave credit usage.

If your sick leave credits are exhausted prior to the end of your fifteen month COBRA premium assistance eligibility period, you are eligible to receive COBRA premium assistance for the remainder of the eligibility period, provided you elect COBRA coverage when the sick leave credits are exhausted. For example, if your health insurance coverage as an active employee ends on January 31, 2010, your fifteen month eligibility period begins on February 1, 2010. You then receive three months of employer contribution towards your premium (coverage through April 30, 2010) and then elect to use your sick leave credits which cover five months of insurance premiums (coverage through September 30, 2010) and then elect COBRA coverage effective October 1, 2010. Both the three months that you received the additional employer contribution and the five months you used sick leave credits, count towards the fifteen month COBRA premium assistance eligibility period so you would be eligible for seven months of COBRA premium assistance (coverage through April 30, 2011).

After your eligibility for COBRA premium assistance ends, you will be required to pay the entire monthly premium out-of-pocket if you want to maintain coverage.

- **If you elect COBRA coverage INSTEAD OF using your sick leave credits to pay for health insurance**, you are immediately eligible for COBRA premium assistance, but you are not eligible to use your sick leave credits to pay for health insurance after COBRA premium assistance ends. After the 15 month COBRA premium assistance eligibility period, you will be required to pay the entire monthly premium out-of-pocket if you want to maintain coverage.

Information about Who is a Non-AEI and the Impact on Eligibility for COBRA Premium Assistance

Per IRS guidelines, COBRA premium assistance is limited to qualified beneficiaries only under **Federal** law only. State law and plan contracts allow employees to cover other dependents who are not qualified beneficiaries under Federal law. These other dependents are eligible to continue coverage under COBRA, but they are not eligible for COBRA premium assistance and are considered non-Assistance Eligible Individuals (non-AEI). If an employee continues coverage that includes a non-AEI, the employee may not be eligible for the full 65% premium reduction. If the cost of covering a non-AEI does not add to the total premium cost to continue coverage, then the cost of covering the non-AEI is zero and the premium reduction will apply to the full amount paid for COBRA continuation coverage. If the cost of covering the non-AEI adds to the cost of covering the AElS on the plan, the incremental cost of covering the non-AEI(s) is ineligible for the premium reduction.

Following is a list of dependents that can be covered under one or more of our benefit plans and whether or not the dependent is eligible for COBRA premium assistance under ARRA:

Relationship to Employee	Qualified Beneficiary under ARRA	Relationship to Employee	Qualified Beneficiary under ARRA
Spouse	Yes	Domestic Partner	No
Biological Child	Yes	Adopted Child/Child Placed for Adoption	Yes
Stepchild (not legally adopted by employee)	No	Grandchild (not legally adopted) if parent is still a dependent child under 18	No
Legal Ward who becomes legal ward prior to age 19 – the employee is the legal guardian	Yes	Parent – if employee has legal custody of parent	No
Children of domestic partner (not legally adopted by employee)	No	The employee must be the biological/adopted parent or legal guardian of a dependent child in order for the child to be an AEI.	

Example 1:

An employee carries 2-person coverage under Anthem DentalBlue Supplemental Plan. The dependent on the plan is a domestic partner. The employee continues 2-person coverage and is eligible for the subsidy.

Monthly premiums: Single = \$16.59, 2 Person = \$33.19, Difference between Single & 2 Person = \$16.60

Because the employee selects 2-person coverage in order to cover a domestic partner, his monthly premium is \$16.60 more than it would be if he had single coverage. The employee is eligible to receive a 65% subsidy on the cost of single coverage and is required to pay the full \$16.60 (difference between cost of single and 2 person coverage) in order to maintain coverage.

The employee would owe 35% of \$16.59 (single premium) + \$16.60 (difference between single and 2 person premium) = \$22.41 to maintain two-person coverage that includes a domestic partner. The employer would then pay 65% of the single premium (\$10.78)

Example 2:

An employee carries Employee & 2+ dependents coverage under Anthem DentalBlue Supplemental Plan. The employee's two biological children and a domestic partner are covered under the policy. The employee continues coverage on everyone covered by current policy and is eligible for the COBRA premium subsidy.

Monthly Premium for Employee & 2+ dependents = \$49.80

The employee and his two biological children are all eligible for COBRA premium assistance. The incremental cost to cover the domestic partner is zero because the employee would be carrying the same level of coverage even if he did not cover his domestic partner. Since the premium cost to cover the domestic partner does not increase with the addition of the domestic partner, the employee is eligible for the full 65% premium reduction on the total premium.

The employee would owe 35% of the premium (\$17.43) and the employer would pay 65% of the total premium (\$32.37).