

Frequently Asked Questions for Participants and Beneficiaries Following Hurricane Sandy



U.S. Department of Labor
Employee Benefits Security Administration
January 2013

Health Benefit FAQs

If my place of employment has closed as a result of Hurricane Sandy, am I still covered by my employer's group health plan?

Even if the employer's physical location has closed, as long as the employer exists, continues to sponsor a plan and employs you, you would generally remain covered under your existing health plan. Many plans require a contribution from the employee to help pay for health coverage. You may need to make arrangements to make this payment if you are not in pay status for some reason.

My employer's place of business is closed. I cannot locate my plan administrator. Whom do I contact to file a claim for benefits or to obtain other documents such as certificates of prior coverage, or replacement identification documents?

Many employers affected by the events of Hurricane Sandy have set up temporary work quarters, or have made other provisions for their employees to contact them. The employer's representative should be able to give you the name of the person to contact to obtain claim forms or other documents.

If it is impossible to locate a contact person for your employer, you may contact one of our benefits advisors electronically at www.askebsa.dol.gov or by calling 1-866-444-3272.

If you do not receive a certificate of creditable coverage from your plan by the time you need one, you may demonstrate to a new plan or insurer that you have creditable coverage by attesting to the period of creditable coverage, producing some supporting evidence (such as a pay stub that reflects a deduction for health insurance, an explanation of benefits form, or verification by a doctor that you had prior health coverage), and cooperating with an attempt to verify your prior health coverage.

I think I may be losing my health coverage as a result of the events of Hurricane Sandy. What can I do to obtain other health coverage?

There may be several health coverage options available to you:

- **Special Enrollment in Another Group Health Plan** - If you think you or your dependents may be losing health coverage and other group health coverage is available to you (for example, if your family is losing eligibility for coverage under your employer's group health plan and your spouse's employer offers a group health plan), you should consider requesting special enrollment in your spouse's plan. Special enrollment gives you and your family an

opportunity to enroll in a plan for which you are otherwise eligible regardless of the plan's applicable enrollment periods. However, to qualify, you must request enrollment within 30 days of losing eligibility for other coverage. After special enrollment is requested, coverage is required to be made effective no later than the first day of the first month following your request for enrollment. This type of coverage is usually less expensive because the employer often pays a part of the premium.

- **COBRA Continuation Coverage** - If you are losing coverage through an employer that continues to offer a group health plan, you may want to consider electing COBRA continuation coverage. COBRA, which generally applies to employers with 20 or more employees, allows you and your family to continue the same group health coverage at group rates. Your cost may be higher than what you were paying before (and is usually higher than what you would pay for coverage if you special enroll in your spouse's plan), but generally it's lower than what you would pay for private individual health insurance coverage. You should get a notice from your plan regarding the availability of COBRA coverage. After this notice is provided, you generally have 60 days to elect coverage and it is then retroactive to the date of loss of coverage. However, you are not required to wait until you receive the election notice to elect COBRA; you may elect earlier. (Note: Once you have elected COBRA, you won't be eligible for special enrollment in another group health plan, such as a spouse's plan, until you have exhausted all COBRA coverage available to you.) COBRA coverage typically lasts 18 months, but may last longer in certain circumstances.
- **Health Coverage Through a Government Program** - You and your family may be eligible for health coverage through your state government or the U.S. government. For information on Medicaid or other government programs for low-income individuals and individuals with special needs, contact your state government. For information on your State Children's Health Insurance Program for children of qualified families, contact your state government or call 1-877-KIDS-NOW (543-7669) or visit www.insurekidsnow.gov on the web. For information on Medicare for people aged 65 and over and for certain people who are disabled or have end stage renal disease, contact the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services at 1-800-MEDICARE (633-4227). You may also contact your State Insurance Commissioner's office for information about the State's high risk pool for people who cannot otherwise get health benefits. Or visit <http://www.healthcare.gov/law/features/choices/pre-existing-condition-insurance-plan/index.html> for information on the Federal program – the Pre-Existing Condition Insurance Plan.

Private individual health insurance coverage. You may qualify for guaranteed access to such coverage if:

- You had health coverage for at least 18 months without a significant break in coverage (generally a break in coverage of 63 days or more) and your most recent period of coverage was under a group health plan
- Your group coverage was not terminated because you committed fraud or did not pay premiums
- You either were not offered COBRA continuation coverage (or coverage through a similar state program), or if you were offered COBRA coverage (or coverage through a similar state program), you both elected and exhausted COBRA coverage

- You are not eligible for other health coverage

If you meet these criteria, you may qualify for guaranteed access to individual health insurance coverage for yourself and your family, without any preexisting condition exclusion. (If you don't meet these criteria, you still may be able to obtain individual health coverage.) However, the cost of individual health insurance coverage is often higher than similar coverage under a group health plan obtained through special enrollment or COBRA. For more information on individual health coverage, contact your state insurance commissioner, or the Department of Health and Human Services, Centers for Medicare & Medicaid Services at 410-786-3000.

Note: When considering your health coverage options, you should examine the scope of the coverage (including benefit coverage and limitations, visit limits, and dollar limits), premiums, cost-sharing (including co-payments and deductibles), and waiting periods for coverage.

For information on the coverage through a particular group health plan, you should review the plan's Summary Plan Description (SPD – a document often referred to as an insurance booklet that describes your health coverage). Call the plan administrator and request a copy if you don't have one.

I lost my spouse in the hurricane. My spouse's employer has agreed to pay the premiums for my health coverage for 12 months. What effect will that have on any future eligibility for continuation health coverage under COBRA?

You should ask the employer for more information. The employer could be:

- Making this offer of paid coverage only if COBRA coverage is declined. In this case, if you elect paid coverage for 12 months, you will be ineligible for COBRA coverage, which is more expensive, but lasts longer.
- Paying the first 12 months of COBRA coverage. In this case, you will be able to continue coverage at your own expense for up to 24 additional months
- Delaying your loss of coverage so that you will be able to have COBRA coverage at your own expense for up to 36 additional months

I had health coverage through my group health plan before I was laid off. Although my plan offered domestic partner coverage, I did not elect it for my domestic partner. Can I elect COBRA continuation coverage for myself and my partner?

If your plan is subject to COBRA, you should be eligible for COBRA continuation coverage. However, whether you can obtain coverage for your partner depends on how often your plan allows active employees to add domestic partners. You should contact your plan administrator for more information on your partner's eligibility for coverage. You and your partner may also be eligible for special enrollment in a plan sponsored by your partner's employer, if available. Contact your partner's plan administrator to find out whether you and your partner are eligible.

My domestic partner and I had health coverage through my group health plan. I'm now being laid off and we are losing eligibility for coverage under the plan. Are we able to elect COBRA continuation coverage, or can we enroll in the group health plan sponsored by my partner's employer?

If your plan is subject to COBRA, you should be able to elect COBRA for yourself and your partner. In addition, if your partner is otherwise eligible for coverage in his or her employer's group

health plan, he or she could be eligible for special enrollment if a request for enrollment is made within 30 days of losing eligibility for coverage under your plan. Whether or not you are an eligible dependent in your partner's group health plan depends on the terms of that plan and your partner should contact the plan administrator for more information on your eligibility.

My domestic partner and I had health coverage through my partner's group health plan. My partner died as a result of the hurricane. Can I elect COBRA continuation coverage?

COBRA does not require that the plan provide you continuation coverage. Rather, whether you are eligible for any coverage depends on the terms of the plan. You should contact the plan administrator for more information. In addition, if you are eligible for coverage under another group health plan (for example, if your employer sponsors a plan), you could be eligible for special enrollment in your employer's plan if you request enrollment within 30 days of losing eligibility for your other coverage. You should contact your employer's plan administrator for more information on special enrollment.

Can my employer terminate or reduce my health benefits?

Employers offer health benefits on a voluntary basis. Federal law does not require employers to offer health coverage to their employees nor does it prevent employers from cutting or reducing benefits in many instances. Employees and their families may have a right to continuation coverage under COBRA if the plan still exists and may have a contractual right to coverage if, for example, benefits are required under a collective bargaining agreement. In addition, a plan cannot deny eligibility or continued eligibility based on health status. For information on the Affordable Care Act and how it relates to employers offering health coverage, visit the website www.healthcare.gov.

I am a retiree and I receive retiree health benefits from my former employer. The company was affected by the events of Hurricane Sandy. Can my retiree health benefits be terminated or changed?

Providing for health care is an important part of retirement. Some employees are fortunate: they belong to employer-provided health care plans that carry over into retirement. Employees and retirees should know that private sector employers are not required to promise retiree health benefits.

Furthermore, when employers do offer retiree health benefits, nothing in federal law prevents them from cutting or eliminating those benefits - unless they have made a specific legally binding promise to maintain the benefits. The key to understanding your retiree health benefits lies in the documents governing your plan. If you have not already done so, you should obtain a copy of the Summary Plan Description to determine the nature of the employer's promise to you.

My employer did not pay my insurance premium. May I pay the premium to continue my coverage?

You should contact your employer to determine the employer's intent to pay the premium. You may wish to contact the insurance company to determine how long the payment has been in arrears, if the insurance company has provided a grace period for late payment, and how long the employer has been given to make the payment. You may also wish to contact your state insurance commissioner regarding any rights you may have under state law to pay premiums directly to the insurance company or convert your health coverage to an individual policy.

If your premiums are in arrears or your coverage has been cancelled as a result of the employer's failure to make the premium payment, you may contact one of our benefits advisors electronically at www.askebsa.dol.gov or by calling 1-866-444-3272.

I had COBRA coverage prior to Hurricane Sandy. The location I was sending my COBRA premium to is closed. Where do I send my premium?

Many employers affected by the events of Hurricane Sandy may set up temporary work quarters, or have made other provisions for their employees to contact them. The employer should be able to give you the information needed to continue making your COBRA premium payments.

If it is impossible to locate a contact person for your employer, you may contact one of our benefits advisors electronically at www.askebsa.dol.gov or by calling 1-866-444-3272.

There is so much going on in our lives right now. Why is focusing on health coverage important?

Although it may be hard to think about health coverage right now, it is important that you don't wait too long before considering your options and making a health coverage decision.

First, because several of your best choices are only available for a limited time, waiting may eliminate some of your best options. Special enrollment in your spouse's plan must be requested within 30 days of loss of eligibility for other health coverage. COBRA continuation coverage must be elected within 60 days of when the COBRA election notice is provided to you.

Second, if you experience a significant break in your health coverage, you may experience long-term adverse effects on future health coverage. For example, a 1996 federal law known as the Health Insurance Portability and Accountability Act (HIPAA) placed strict limitations on a group health plan's ability to deny benefits for medical conditions based on a preexisting condition exclusion. Under HIPAA, plans generally must give you credit for prior health coverage, reducing or eliminating any preexisting condition exclusion under the plan. However, if you experience a significant break in coverage (generally a break of 63 days or more), you may lose your credit for prior health coverage and you will lose guaranteed access to individual health insurance coverage.

Where can I get more information on my health coverage options?

For more information on your health benefits rights and options, the following publications are available on our Website or by calling 1-866-444-3272:

- Retirement and Health Care Coverage... Questions and Answers for Dislocated Workers (en español)
- Employee's Guide to Health Benefits Under COBRA (en español)
- Your Health Plan And HIPAA....Making The Law Work For You (en español)

The Affordable Care Act (ACA) provides additional health protections. For more information, visit the Department of Labor's Web page at www.dol.gov/ebsa/healthreform/.

If you still have questions about your rights, or need assistance in obtaining your benefits, you may contact one of our benefits advisors electronically at www.askebsa.dol.gov or by calling 1-866-444-3272.

Retirement Benefit FAQs

My employer's place of business is closed due to the events of Hurricane Sandy. Whom should I contact to file a claim for retirement benefits or make sure that I will continue to receive my pension payments on time?

Every retirement plan is required to have a plan administrator. The plan administrator may be the employer (or labor organization) sponsoring the benefit plan or it may be some individual or entity appointed to serve as the plan administrator. Retirement plans must provide participants with a Summary Plan Description (SPD) describing the plan rules in plain English. The SPD should also contain information on how to identify and locate the plan administrator, as well as steps to follow in applying for a benefit. Whenever possible, a participant should first try to contact the plan administrator for information on benefits.

A second point of contact may be the employer's human resource or personnel department. If the plan employer's place of business is closed and no temporary work quarters have been established, it may not be possible to contact the plan administrator or the employer.

However, there may be others who may be of help. These include the plan trustee who holds the plan assets, a mutual fund, insurance company, bank or other financial institution providing services to the plan, a third party who handles the administrative functions of the plan, or the plan accountant. These persons may be identified in plan correspondence or benefit statements that you may have received previously.

When it is impossible to contact the plan administrator, the employer or other officials mentioned above, you may contact one of our benefits advisors electronically at www.askebsa.dol.gov or by calling 1-866-444-3272.

My pension payment normally arrives on the 15th of each month. It did not come this month. What should I do?

Call your plan administrator to determine the reason for the delay in the receipt of your payment. Ask whether the plan is having operational problems or whether this problem is limited to your payment. If the problem is limited to your payment, discuss how to resolve your problem with the administrator. If the delay involves a plan operation issue, ask what efforts are being made to make timely payments.

Your employer or former employer may be able to get answers to your questions. Parent or subsidiary companies of your employer also may be able to help you get information on the status of payments. Firms providing services to your plan such as third party administrators, investment advisors and trustees may also be able to provide you with information about benefit payments.

If you are still unable to get information about the status of your benefits, you may contact one of our benefits advisors electronically at www.askebsa.dol.gov or by calling 1-866-444-3272.

How can I make changes in the way my 401(k) plan account is invested if it was affected by the events of Hurricane Sandy?

Begin by attempting to make changes through normal procedures contained in your Summary Plan Description or other plan documents. If your employer or the financial services firm holding your

account was affected by the events of Hurricane Sandy, there may be a delay in making changes to your investments. In this event, you should contact the plan administrator or other plan officials such as the employer sponsoring the plan, trustee, or the party providing administrative services to the plan to determine what steps are being made to restore the plan's normal operations. If you are unable to obtain this information, you may contact one of our benefits advisors electronically at www.askebsa.dol.gov or by calling 1-866-444-3272.

Can I get money out of my retirement plan if I need financial assistance to help me at this time?

Many plans provide for loans to plan participants. However, federal law does not require plans to make loans. Your Summary Plan Description (SPD) or other plan documents should explain the terms of any plan loan program. You will only be able to obtain a loan if the plan has a loan program. Your plan may also permit withdrawals in the event of hardship, disability or termination of employment. Federal law, however, does not require that plans provide for such withdrawals. Your SPD or other plan documents should provide information concerning any right you may have with respect to such withdrawals. Withdrawing money from your plan may have tax or other adverse consequences. (See the following question.)

You may be able to take advantage of streamlined loan procedures and liberalized hardship distribution rules if you or certain members of your family live in the areas affected by Hurricane Sandy. For more information, see the IRS Announcement 2012-44.

If you wish to get money out of your retirement plan in the form of a loan or a hardship withdrawal, you should contact your plan administrator, plan sponsor, or other plan official. If you are unable to contact any of these officials, you may contact one of our benefits advisors electronically at www.askebsa.dol.gov or by calling 1-866-444-3272.

Are there any potential adverse effects if I receive my retirement benefits prior to normal retirement age?

Yes. Receiving a lump sum or other distribution from your retirement plan may affect your ability to receive unemployment compensation. You should check with your state unemployment office.

Receiving money from your retirement plan may result in additional income tax. You can defer these taxes, however, if you keep the money in your plan or if you "roll over" the money into a qualified retirement plan or Individual Retirement Account (IRA). There are provisions in the Internal Revenue Code that govern these rollovers.

If you cash out your 401(k) when leaving a job and you are younger than 59 1/2 years old, you may have to pay a 10% penalty, along with state and federal taxes.

During difficult economic times, you may look at your 401(k) balance and think that you need the money now more than you will later. And of course, there may be times when it will be the last resort to which you have to turn for a loan or a "hardship withdrawal." "Leakage" from 401(k) accounts can also result in a permanent loss of retirement savings.

So, before you act, make sure you understand the differences between loans, hardship withdrawals, and lump sum cash outs, including the long-term consequences of each.

When must my retirement plan pay my benefits?

Federal pension law does not set a specific time within which plans must start paying benefits after you retire or otherwise become eligible to receive benefits. Plan administrators must act prudently and follow the procedures in the plan documents. Your Summary Plan Description (SPD) or other plan documents should provide information on those procedures. If you have specific questions, you should contact the plan administrator.

Some plans pay benefits only after a participant reaches normal retirement age. Many plans, however, allow for earlier distribution of benefits under certain circumstances. The rules permitting earlier distribution of benefits will be contained in the plan document or SPD. For example, some plans may require a participant to be separated from employment for a specified period of time before being eligible to receive a benefit.

Is my retirement plan required to give me a lump-sum distribution?

Federal law does not require that plans provide for lump sum distributions. Many plans, however, do contain provisions allowing for lump sum distributions. Consult the plan documents or Summary Plan Description to determine your eligibility for a lump sum distribution.

If you are in a traditional defined benefit pension plan (a plan in which you receive a benefit based on a formula established in the plan) your benefits usually begin at retirement age. These types of plans are less likely than defined contribution plans (such as 401(k) plans) to contain a provision that enables you to receive your benefits in a lump sum.

I am the spouse of a deceased plan participant. How do I know what benefits I am entitled to; how do I file a claim; and what proof will I need to give the plan?

One of the most important documents you should have is the Summary Plan Description (SPD). It outlines the plan rules including benefit rights, the way benefits are calculated, how to apply for benefits and how to appeal a denial of a claim for benefits. A copy of the SPD must be provided when a plan participant or beneficiary requests it in writing. If you do not have a copy of the SPD, you should contact the plan administrator.

In addition to the SPD, you can ask the plan administrator to provide you information about the amount of benefits your spouse had earned to date and vesting status (the amount of benefits earned that cannot be forfeited). This is important information for you, whether you withdraw your money now or later. You should also ask the plan administrator what information the plan requires to decide your claim and how to file the claim.

If I am entitled to receive benefits from my spouse's retirement plan based on the terms of a divorce or separation, what should I do to make sure my rights are protected?

If you have been awarded a portion of your former spouse's retirement benefits in a domestic relations proceeding, you may wish to verify that the plan administrator still has records of the determination that you are entitled to benefits under the plan.

If the plan's records have been destroyed, you may need to provide the plan with a copy of the domestic relations order that established your entitlement to benefits under the plan. You should also provide the plan with any other evidence you may have that the order was sufficient and that you were entitled to benefits. Other evidence might include a benefit statement from the plan showing your benefit.

If my employer faces economic difficulties as a result of the events of Hurricane Sandy, can my employer terminate my retirement plan, and if so, what happens to my benefits?

Federal law generally does not prohibit employers from terminating their retirement plans. The law does protect your rights to benefits earned before the plan is terminated and requires that employers follow certain rules when terminating plans. There is, however, no right to earn additional benefits under the plan. The benefits you are entitled to will depend on the type of plan you participate in and how long you have worked for the employer.

If you were covered by a traditional defined benefit pension plan, the benefits you may be entitled to generally will depend on a formula that is contained in your plan documents and Summary Plan Description (SPD). The plan's formula may include factors such as age, length of service and pay. Benefits may not be payable under the plan until you reach normal retirement age, generally age 65 or some other age specified in the plan documents and SPD.

The termination of defined benefit pension plans is also regulated by the Pension Benefit Guaranty Corporation (PBGC), which guarantees certain benefits in the event that the plan's assets are not sufficient to pay benefits. For information on the PBGC's plan termination insurance program, contact the PBGC's Customer Service Center at 1-800-400-7242.

If you were covered by a defined contribution plan, such as a 401(k) plan, profit sharing, or employee stock ownership plan, each participant has an individual account in the plan. Contributions, earnings, and investment gains or losses are credited to this individual account. You are always 100% vested in any contributions you made to the plan, including investment gains and earnings on your contributions, less any investment losses. In addition, depending on the terms of the plan, you may be vested in part or all of your employer's contributions. You will be automatically 100% vested in the employer contributions to the plan when the plan is terminated.

All of the records concerning my employment with the retirement plan sponsor and my participation in the retirement plan were destroyed as a result of the events of Hurricane Sandy. What do I do?

You should search your personal records for any material or documents that would help to establish your employment and participation in the plan. Look for pay statements and W-2 forms showing that you were covered under a plan and the amount you may have contributed to the plan. You also may have benefit or account statements issued by the plan that you may be keeping with your important papers. For example, many 401(k) plans distribute regular account statements. These records may show the names of the investment vehicles in which your 401(k) account was invested.

When you began employment with the employer sponsoring the plan, you may have been given an employee handbook and beneficiary designation forms to complete. You may have copies of these that may also help to establish your rights under the plan.

Where can I get more information on my retirement benefit rights?

More information on your pension benefits rights is available in the following publications:

- Retirement and Health Care Coverage... Questions and Answers for Dislocated Workers (en español)
- What You Should Know About Your Retirement Plan (en español)

You may also call 1-866-444-3272 to request copies of publications.

For information on a particular retirement plan, you should review the plan's Summary Plan Description. Call the plan administrator and request a copy if you don't have one.

If you still have questions about your rights, or need assistance in obtaining your benefits, you may contact one of our benefits advisors electronically at www.askebsa.dol.gov or by calling 1-866-444-3272.

