

Final Regulations Issued for COBRA

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As a refresher, COBRA is a federal law that requires employers with 20 or more employees that sponsor a health plan (whether fully insured or self-funded) to offer to continue the health care coverage of employees and/or their dependents if their coverage is lost due to a “qualifying event.” Such qualifying events are: 1) the employee’s termination of employment (other than for gross misconduct) or reduction in hours; 2) the employee’s death; 3) divorce or legal separation; 4) the employee’s entitlement to Medicare; and 5) a dependent child ceasing to be a dependent as defined in the plan. The maximum duration of COBRA coverage based on the employee’s termination of employment or reduction in hours is 18 months (an additional 11 months of coverage may be available in certain cases of disability). The maximum period for the other events is 36 months.

On May 26, 2004, nearly 20 years after COBRA was passed by Congress, the Department of Labor issued the final COBRA regulations. The regulations describe the notices that a Plan Administrator (*i.e.*, the employer) is required to provide to employees and/or their dependents who will be losing health coverage in order to advise them of their right to continue benefits. It also describes the timing of such notices. Models are included in the regulation for some of the notices and, although their use is not mandatory, they do provide a safe harbor guidance for the administrator. These model notices can be accessed at the Department of Labor’s website at www.dol.gov/ebsa/. The compliance date for these new regulations for calendar year plans is January 1, 2005. Prior to that date, it will be necessary for plans to review their existing notices and procedures and make any revisions.

COBRA requires a variety of notice obligations of the plan administrator in order to provide information to qualified beneficiaries and to satisfy their legal duty. The two main notice requirements are: (1) the Initial (General) Notice; and (2) the Election Notice. These two notice requirements existed even before the final regulation was issued. The new regulation does, however, provide clarification and some much needed guidance regarding the timing of providing these notices and the specific information they must include.

Initial Notice

The Initial Notice must be given to the employee and the spouse (if the spouse is covered under the plan) within 90 days of the effective date of coverage. This notice contains general information regarding COBRA coverage such as what constitutes a qualifying event, what the obligations are of the qualified beneficiary, the maximum coverage periods, and the requirements for premium payment.

Election Notice

The Election Notice should be given to each qualified beneficiary as soon as possible after the termination of coverage, but no later than 44 days. This notice informs qualified

beneficiaries of their rights to elect COBRA and allows them to make application for COBRA coverage.

The regulation also created two new notice requirements: a Notice of Unavailability and a Notice of Termination of Coverage. The Notice of Unavailability must be sent by the Plan Administrator within 14 days after receiving notice of a qualifying event if it is determined that the individual is not entitled to COBRA coverage (e.g., in a case where the employer does not have 20 or more employees). The Notice of Termination of Coverage must be provided upon the Plan Administrator's determination that COBRA coverage will terminate early, such as in a case of non-payment of premium. It must explain why and when the coverage will be terminated, and must explain any other rights to coverage that may be available to the individual.

While Western Mutual Insurance Company ("WMI") and WMI TPA, Inc. perform some of the ministerial COBRA functions on behalf of Plan Administrators, the final regulation makes it very clear that the requirements of COBRA are ultimately the Plan Administrator's responsibility. Failure to provide timely and adequate notices may not only cause a qualified beneficiary to lose COBRA rights, but may also subject the Plan Administrator to monetary penalties. More importantly, such a failure may allow an individual to bring suit against the employer to recover claims payments. It is, therefore, very important for employers to keep informed about COBRA and to verify that the required procedures are being performed.

A helpful website where you can find the text of the regulation, question and answer documents, and the model notices is www.dol.gov/ebsa/. You can also find the current Initial Notice that is distributed by WMI and WMI TPA, Inc. on the Forms link of the following websites: www.westernmutualinsurance.com and www.wmitpa.com. If you have any questions about this information, please contact our office at (801) 263-8000.