

BENEFITS CORNER - FINAL COBRA REGULATIONS

The Department of Labor issued its final COBRA regulations on May 26, 2004. (*See* 29 C.F.R. Part 2590). The regulations relate primarily to the various notice requirements of COBRA. All COBRA covered health insurance plans must be in compliance with the new regulations by the first day of the plan year commencing on or after November 26, 2004. Therefore, if your plan year starts on January 1st, your COBRA notices will need to comply with the regulations by January 1, 2005.

COBRA regulations apply to employers that have 20 or more employees on more than 50% of its typical business days in the previous calendar year. If your company does not fall within this definition, you don't need to offer COBRA. If you do offer COBRA, regardless, you must meet its notice requirements. Additionally, if your company doesn't fall within the statutory requirements of COBRA, you may still be obligated to provide some form of continuation coverage to your employees under state law. For example, employers in Illinois not covered under COBRA must provide up to 9 months of the Illinois Continuation Coverage.

The final regulations maintain many of the proposed regulations, but attempt to simplify some of the procedures. The final regulations also provide excellent sample notices for plan administrators to utilize. For plans already subject to COBRA, the following regulations apply:

Plan administrators must provide a general notice to each covered employee and each covered employee's spouse of the right to continuation coverage under the plan within 90-days after the individual's coverage under the plan commences. This initial notice no longer needs to list the requirement to provide notice of second qualifying events as this information is provided to beneficiaries when the COBRA election notice is sent.

This initial notice may be fulfilled by either sending a general notice provision to the employee or by ensuring that all of the relevant notice provisions are contained in the Summary Plan Description (SPD) for the health care plan and that the SPD is given to the employee and spouse within 90-days of their eligibility. Separate notices are not required to be given to a spouse, where the plan's latest information indicates that the employee and spouse reside at that same address. Also, there is no requirement to furnish separate general notices to dependent children. In-hand deliver of notice is sufficient as to the employee, but is not deemed delivery to the employee's spouse.

Plans must establish "reasonable procedures" for the furnishing of employee and qualified beneficiary notices to the plan administrator. As a very general rule, the employee or

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beneficiary must provide notice within 60 sixty days after a qualifying event occurs. The exception is notice of Social Security disability which must be provided within 30 days after the Social Security Administration determination.

“Reasonable Procedures” must be (1) described in the plan’s summary plan description; (2) specify the individual or entity designated to receive notice; (3) specify the means by which notice may be given; (4) describe the events subject to notice. A form may be utilized to provide notice, but such form must be easily available at no cost to covered employees and beneficiaries. A Plan’s failure to establish reasonable procedures simply means that written or oral communication of the above-referenced notice to the employer’s benefits personnel may be deemed sufficient notice.

The COBRA continuation election notice has not changed sufficiently from the proposed regulations. The DOL retained requirements for HIPAA information and plan contact information in the election notice. Identification of beneficiaries may be made by name or by a clear reference to their status (employee, spouse, dependent child). The final regulations do not require specific disclosure requirements relating to rights and duties that may arise resulting from the Trade Act, although plan sponsors may include such information.

Plan Administrators are recommended to:

1. Decide whether the initial general notice will be a part of the summary plan description or a separate notice;
2. Ensure the summary plan description is compliant with the notice procedures;
3. Compare initial notice and election forms to DOL samples;
4. Establish “reasonable procedures: for beneficiary notification to the Plan;
and
5. Establish a uniform delivery method for all notices.

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COBRA FINAL REGULATIONS NOTICE REQUIREMENTS

EVENT	NOTICE TO	NOTICE FROM	# Days to provide notice	FORM/MEANS OF NOTICE
New enrollee	Employee	Plan Administrator	90 days	Individual Notice or Summary Plan Description
Death of employee	Plan Administrator	Employer/Plan Administrator	30 days	Form to permit eligibility determination Notice of right to continuation coverage under plan
	Qualified beneficiaries	Administrator	14 days	
Reduction in Hours	Plan Administrator	Employer/Plan Administrator	30 days	Form to permit eligibility determination Notice of right to continuation coverage under plan
	Qualified beneficiaries	Administrator	14 days	
Termination of Employment	Plan Administrator	Employer/Plan Administrator	30 days	Form to permit eligibility determination Notice of right to continuation coverage under plan
	Qualified beneficiaries	Administrator	14 days	
Entitlement to Medicare	Plan Administrator	Employer/Plan Administrator	30 days	Form to permit eligibility determination Notice of right to continuation coverage under plan
	Qualified beneficiaries	Administrator	14 days	
Proceeding in Bankruptcy	Plan Administrator	Employer	30 days	Form to permit eligibility determination Notice of right to continuation coverage under plan
	Qualified beneficiaries	Plan Administrator	14 days	
Divorce or Legal Separation	Plan Administrator	Employee or Spouse	60 days	Form provided by plan or within reasonable procedures in SPD Notice of right to continuation coverage under plan
	Employee or Spouse	Plan Administrator	14 days	
Ceasing to be a dependent child	Plan Administrator	Employee, Spouse, or beneficiary	60 days	Form provided by plan or within reasonable procedures in SPD Notice of right to continuation coverage under plan
	Qualified beneficiaries	Plan Administrator	14 days	
Second qualifying event while under COBRA	Plan Administrator	Qualified beneficiaries	60 days	Form provided by plan or within reasonable procedures in SPD Notice of right to continuation coverage under plan
	Qualified beneficiaries	Plan Administrator	14 days	
Disability Determination by SSA	Plan Administrator	Qualified beneficiaries	30 days	Form provided by plan or within reasonable procedures in SPD Notice of right to continuation coverage under plan
	Qualified beneficiaries	Plan Administrator	14 days	
Disability cessation by SSA	Plan Administrator	Qualified beneficiaries	30 days	Form provided by plan or within reasonable procedures in SPD Notice of right to continuation coverage under plan
	Qualified beneficiaries	Plan Administrator	14 days	
Not entitled to continuation coverage	Employee, Spouse or Qualified beneficiary	Plan Administrator	14 days	Explanation to individual as to why the individual is not entitled to continuation coverage
Early termination of Continuation Coverage	Qualified beneficiaries	Plan Administrator	As soon as practicable	The reasons continuation coverage is terminating; the date of termination of coverage; and rights to individual or conversion coverage