

“SECOND CHANCE” FOR COBRA ELECTIONS

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Employers need to be aware of recent legislation which will soon require a change in COBRA notices and procedures. The Trade Act of 2002 was signed into law on August 6, 2002, and amended federal COBRA requirements by adding a new “second chance” COBRA election for individuals who become eligible for trade adjustment assistance as a result of a trade assistance petition filed on or after November 4, 2002. Trade adjustment assistance is federal aid which is available for workers displaced by increased imports of competing products from foreign countries.

Under the new law, an individual is entitled to a second 60-day COBRA election period if he or she (i) becomes eligible for trade adjustment assistance (as certified by the government under the 1974 Trade Act); (ii) lost his or her group health plan coverage because of a job loss that resulted in eligibility for trade adjustment assistance; and (iii) did not elect COBRA during his or her initial COBRA election period.

The new COBRA election period begins on the first day of the month in which the individual becomes certified for trade assistance, but the election must be exercised within six months of the initial loss of coverage. Although it is not entirely clear from the law, it appears that the COBRA coverage period (i.e., 18, 29, or 36 months) begins with the initial loss of coverage, so the “second chance” election does not increase the total period of time the individual receives COBRA coverage. In addition, there is no retroactive coverage back to the initial loss of coverage.

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The law is also silent about employer notice requirements, although it is reasonable to assume that employers will be required to amend their COBRA notices and election forms to reflect the new procedures. The new law also makes employees eligible for a tax credit for COBRA premiums, and contains a provision through which the federal government will pay 65% of the COBRA cost. Although the mechanism for this payment is unclear, the Act empowers IRS to require health insurance providers to file information returns identifying individuals eligible for the tax credit and the amount of the COBRA premium. The law requires the Treasury Department to establish this program no later than August 1, 2003.

The new law also impacts HIPAA's pre-existing condition rules, and requires that if an individual takes the second chance COBRA election, the period of time following the initial loss of coverage until coverage resumes, does not count against HIPAA's 63-day break in coverage period.

Please contact your Fisher Phillips attorney with your questions about the new COBRA requirements, or if you need your COBRA materials updated.