



Have You Updated Your COBRA Forms?

Insights

2.04.05

Last May, the Department of Labor's Employee Benefits Security Administration (EBSA) issued long-awaited final COBRA regulations, clarifying and updating COBRA notice requirements. The regulations *revise the notices* which employers use to comply with COBRA, and are applicable on the first day of the plan year which begins on or after November 26, 2004. For most plans which operate on a calendar year basis, this means the effective date was January 1, 2005.

Outsourced Your COBRA Administration? Keep reading.

Even if you outsource your COBRA administration, you should still review all your COBRA forms and procedures to make sure they comply with the final regulations, as we have found that many vendors' forms still do not meet all the new COBRA requirements. Also, some vendors do not necessarily provide complete and best practice COBRA procedures. All COBRA notices have been revised from the versions which appeared in EBSA's proposed regulations in 2003. Accordingly, any employers who changed their COBRA forms to correspond with EBSA's 2003 notices should carefully review those documents to make sure they are up to date. The new regulations also require additional COBRA notices and substantial administrative notice requirements to complicate plan administration.

What's important:

1. Plan administrators must now furnish individuals with an "unavailability" notice to be used if the administrator is notified of a qualifying event by a person who is not eligible for COBRA.
2. Plan administrators must also furnish individuals with an "early termination" notice if a COBRA recipient loses his or her right to coverage before expiration of the maximum 18, 29 or 36-month coverage period which applies to the individual.
3. Plan administrators must maintain "reasonable" COBRA compliant procedures to be used by participants or beneficiaries to notify the plan that a qualifying event has occurred in those cases in which the participant or beneficiary is required to notify the plan of the event. These procedural requirements are detailed to the point that we believe best practices dictate that the plan develop not only the required procedures, but a fifth COBRA form for use by participants and beneficiaries when they give such notice.

4. EBSA "believes" that a plan should also maintain procedures that define when and under what circumstances an incomplete notice of a qualifying event received from participants or beneficiaries can be rejected by the plan for failure to supply required information.
5. Summary Plan Descriptions (SPDs) must be updated to include information about the new COBRA notices and about the COBRA procedures which the plan is adopting.

If you are using COBRA notices that were prepared before May 2004, they are unlikely to satisfy new COBRA requirements. To ensure that your company complies with the new COBRA regulations, Fisher Phillips has prepared a package of model notices, procedures and model SPD language. These are available with instructions for customization for a flat fee of \$500. If you prefer, Fisher Phillips can work with you to prepare customized forms for a flat fee of \$750 for a single health plan. If you have multiple plans, we can help prepare additional forms and SPD language based on an hourly rate.

If you would like help or additional information regarding COBRA compliance, please contact a member of the Employee Benefits Practice Group, your regular F&P lawyer, or contact us at benefits@laborlawyers.com.