

ERISA ALERT

PROPOSED REGULATIONS CHANGE COBRA NOTICE REQUIREMENTS



The Department of Labor (DOL) recently issued proposed regulations that change the notice requirements under the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended (COBRA). The proposed regulations (1) provide a new model "general" notice, (2) provide a new model election form, (3) set minimum standards for the timing and content of the notices required under COBRA, (4) establish standards for the administration of COBRA's notice requirements and (5) create new notice requirements for plan administrators.

EFFECTIVE DATE OF NEW COBRA NOTICE REQUIREMENTS

The DOL expects to adopt final regulations early in 2004, and group health plans will have six months thereafter to implement the necessary administrative changes. *However, the DOL has stated that, effective immediately, the continued use of the DOL's 1986 model general notice is no longer good faith compliance with COBRA's general notice requirements.* Therefore, we recommend that our clients begin using the new DOL model notices immediately.

GENERAL COBRA NOTICE

The general COBRA notice is the initial notice provided to covered employees and qualified beneficiaries informing them of their right to COBRA coverage. Under the proposed regulations, the general notice must generally be provided within 90 days after coverage begins. The proposed regulations provide guidance on the content of the general notice and indicate that the plan may include all of the information required to be in the general notice in the plan's summary plan description (SPD), provided that the SPD satisfies both the general notice content requirements and SPD content requirements.

NOTICE REQUIREMENT FOR EMPLOYERS

Under COBRA, an employer must provide the plan administrator with notice of the following qualifying events: (a) the employee's termination of employment, (b) the employee's reduction

in hours of employment, (c) the employee's death, (d) the employee's becoming enrolled in Medicare or (e) commencement of a proceeding in bankruptcy with respect to the employer. This notice must generally be provided no later than 30 days after the date of the qualifying event. Under the proposed regulations, the notice must include sufficient information to enable the plan administrator to determine the plan, the covered employee, the qualifying event and the date of the qualifying event.

NOTICE REQUIREMENT FOR COVERED EMPLOYEES AND QUALIFIED BENEFICIARIES

Each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the following qualifying events: (a) the divorce or legal separation of the employee from his or her spouse or (b) a dependent's no longer being eligible to be covered as a dependent under the plan. This notice must be provided within 60 days of the qualifying event. Under the proposed regulations, the plan must establish "reasonable procedures" for providing this notice. Generally, plan procedures will be reasonable if they are described in the plan's SPD and specify the content of the notice, how it may be sent and the person designated to receive the notice.

NOTICE REQUIREMENT FOR PLAN ADMINISTRATORS

Within 14 days after a plan administrator is notified of a qualifying event, the plan administrator is required to notify each covered employee or qualified beneficiary who is entitled to elect continuation coverage of his or her COBRA rights. The proposed regulations clarify that where the employer is also the plan administrator, the employer generally has 44 days from the date of the qualifying event to provide the COBRA election notice.

NEW NOTICE REQUIREMENTS

The proposed regulations also establish two new notice requirements for plan administrators. First, a plan administrator is now required to notify an individual if continuation coverage is determined not to be available. And second, the proposed regulations require plan administrators to provide notice to an individual when COBRA coverage terminates before the end of the maximum period for coverage (e.g., due to failure to pay a COBRA premium).

The attached chart provides information regarding each type of notice, including who is responsible for providing the notice, to whom it must be furnished and applicable timing requirements.

REVISED NOTICES			
Notice	Who's Responsible?	To Whom?	When?
General Notice (New DOL Model Available)	Plan Sponsor	Covered employees, spouses and eligible dependents	Within 90 days after the individual becomes a participant
Employer's Notice to Plan Administrator of Certain Qualifying Events	Employer	Plan Administrator	Within 30 days of certain qualifying events (e.g., termination of employment or reduction of hours)
Notice of Right to Elect COBRA (New DOL Model Available)	Plan Administrator	Employees, Qualified Beneficiaries	Within 14 days after receiving notice of qualifying event from employer (or within 44 days after qualifying event if employer is plan administrator)
Qualified Beneficiary's Notice of Certain Qualifying Events	Employees/Qualified Beneficiaries	Plan Administrator	Within 60 days after the qualifying event (e.g., divorce/separation, dependent no longer eligible)
NEW NOTICES			
Notice	Who's Responsible?	To Whom?	When?
Notice of Unavailability of COBRA Coverage	Plan Administrator	Covered Employees/Qualified Beneficiaries	Within 14 days after receiving notice of qualifying event from employer (or within 44 days after qualifying event if employer is plan administrator)
Notice of Termination of COBRA Coverage	Plan Administrator	Covered Employees/Qualified Beneficiaries	As soon as administratively practicable after the termination decision is made

CONTACT INFORMATION

Employee Benefits Team

If you have any questions or would like additional information regarding COBRA's notice requirements, please contact:

Andrew L. Gaines	212.872.1061	againes@akingump.com	New York
Adrienne A. Scerbak	212.872.1056	ascerbak@akingump.com	New York
Robin M. Schachter	310.728.3363	rschachter@akingump.com	Los Angeles
Bruce E. Simonetti	212.872.8023	bsimonetti@akingump.com	New York

Albany Austin Brussels Chicago Dallas Houston London Los Angeles Moscow New York
Northern Virginia Philadelphia Riverside Riyadh (Affiliate) San Antonio San Francisco Washington, D.C.