

New COBRA Regulations Require Timely Employer Action

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By **Charles H. Kaplan, Esq.**

Partner, Thelen Reid & Priest LLP

On May 26, 2004, the U.S. Department of Labor issued final regulations concerning the timing and substance of notices that employers and plan administrators must issue regarding group health continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). These new regulations, which are codified at 29 CFR Part 2590, require timely employer action to overhaul COBRA notices and procedures.

COBRA requires that employers sponsoring group health plans offer employees and their families the opportunity for a temporary extension of health coverage at group rates in certain instances where coverage under the group health plan would otherwise terminate. COBRA requires administrators of group health plans to provide notices to employees and covered dependents (1) upon their commencement of coverage under the plan, and (2) upon a "qualifying event," which would cause loss of their coverage under the plan. The regulations provide sample notices that group health plan administrators can customize for their own use.

The new regulations become effective on or after the first day of the first plan year beginning on or after November 26, 2004. For calendar-year plans, the regulations cover events occurring on or after January 1, 2005.

The regulations comprise four key areas:

- 1. General Notice of Continuation Coverage** — Requires employers and group health plan administrators to provide written notice to covered employees and qualified beneficiaries of continuation of coverage rights when coverage commences under the plan.
- 2. Notice Requirements for Employers** — Requires employers to notify their group health plan's administrator of certain qualifying events.
- 3. Notice Requirements for Covered Employees and Qualified Beneficiaries** — Requires covered employees and qualified beneficiaries to notify plan administrators of qualifying events, under certain circumstances.
- 4. Notice Requirements for Plan Administrators** — Requires group health plan administrators to notify qualified beneficiaries of their rights to continued coverage under the plan based on a qualifying event.

The new regulations make many changes and clarifications to existing COBRA regulations. Accordingly, employers and plan administrators must:

- a) Revise existing COBRA notices (both general and qualifying event notices) to meet new substantive legal requirements.
- b) Notify employees and qualified beneficiaries of their rights under COBRA within 90 days after “coverage under the plan commences.”
- c) Establish and communicate reasonable procedures that qualified beneficiaries can follow when notifying plan administrators of a qualifying event, and update the plan’s summary plan description (“SPD”) to set forth such procedures. (Absent such procedures, an employee’s oral notification of a qualifying event to an employee who customarily handles an employer’s employee benefits could trigger COBRA obligations.)
- d) Notify an individual within 14 days after he or she claims that a qualifying event (such as a divorce) has occurred if the plan administrator determines that the individual is ineligible for COBRA coverage.
- e) Notify a qualified beneficiary “as soon as practicable” after determining that the individual’s COBRA coverage will end sooner than the end of the maximum period of applicable COBRA coverage.
- f) Modify the plan’s SPD to include information concerning the possible availability of a new, second COBRA election period for individuals eligible for Trade Adjustment Assistance under the Trade Act of 2002.

Employers and plan administrators should seek prompt guidance from experienced labor, employment, and employee benefits counsel in order to update their existing COBRA notices, prepare the additional required notices, revise their SPDs, and ensure they are in full compliance with the new regulations.

For further information about the new regulations and COBRA, please feel free to contact Thelen Reid’s Labor and Employment Department or Employee Benefits and Executive Compensation Practice Group.

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