

Department of Labor Final Rules on COBRA Notices

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First in a series of articles - The COBRA General Notice Requirements

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Over the next few weeks KnowCOBRA.com will issuing a series of white papers analyzing the new Department of Labor COBRA Notice Regulations. This is the first in that series.

When COBRA was first passed in 1985, the Department of Labor was given authority to issue regulations regarding notice and disclosure requirements of COBRA. The Internal Revenue Service has the responsibility of issuing rules defining required continuation coverage. While the IRS has released a variety of COBRA regulations and official guidance, the DOL has given the employers very little direction on the distribution of COBRA Notices.

Finally, almost 20 years after the original passage of COBRA, the DOL has released final notice regulations which were published in the Federal Register on Wednesday, May 26th. In the years since COBRA was introduced an entire industry has been created to assist employers with their COBRA administration requirements. Fortunately, many of the requirements contained in this final rule are fairly consistent with current industry practices, and good COBRA administration firms will be able to integrate the new requirements into their current procedures without a significant increase in administration effort or cost.

Unfortunately, as with any new regulation, there are a number of requirements and issues that may force employers to change internal practices, even if they use an outside administrator. The new rules also raise some questions that have yet to be addressed by the DOL.

These rules must be carefully considered by employers. The single most common reason for COBRA lawsuits over the last 19 years has been issues related to an accusation of an improper notice. Even if an employer uses an outside administrator, in the end it is the employer that is responsible to offer COBRA to beneficiaries properly. COBRA administration contracts often do not clearly shift liability to the administrator, so employers must be confident that the rules are being properly followed.

The following summary addresses the issues covered in the DOL's Final Notice Rule only. It is not intended to be a complete summary of all COBRA issues or rules.

Effective Date

The regulations apply to plans with a plan year beginning on or after November 26th, 2004.

It is likely that most employers who sponsor multiple plans with different effective dates will implement the new rules for all plans effective on the earliest plan year date. I cannot think of many reasons why an employer would want to have different notice procedures for different plans based on plan year.

The General Notice

For years in COBRA seminars I have preached about the importance of the initial or "General COBRA Notice" and the final rules again emphasize this point. Many COBRA complaints stem from a qualified beneficiary claiming "they didn't know...". An employer's most important defense against this threat is an effective and complete COBRA General Notice.

Model Notice

The DOL has issued a new Model General Notice for use by employers. Use of the Model is not required, however, the regulations require certain notice content so it is likely that most employers will stick close to the DOL model language. A copy of the DOL model notice can be downloaded from our COBRA information site www.KnowCOBRA.com.

General Notice Rules

- The notice must be sent to covered employees AND spouses, but not to dependents of the employee unless they live separately from the covered employee.
- If the notice is mailed it must be addressed to both the employee and spouse.
- One notice may be sent to the home as long as the employer's most recent information show that both the employee and spouse reside at the same address
- If a spouse's coverage begins on a different date than the employee, a separate notice must be sent to the spouse.
- The General Notice may be contained in an employer's SPD as long as the SPD is distributed in compliance with the notice distribution rules.
- The General Notice may be delivered by hand to employees at work, however, this method would not meet the requirement regarding a covered spouse.

Timing of the Notice

- The notice must be send within 90 days of the date the employee or spouse become covered by the plan.
- If an employee or spouse experiences a qualifying event within 90 days of being covered and a General Notice has not yet been sent, it must be sent in the same time frame as the required Election Notice.

Special Employer Problems with General Notice Rule

- The rule requires that the General Notice contain a statement that “the notice does not fully describe continuation coverage...and that more complete information...is available from the plan administrator and in the plan’s SPD”. Adding this language to the initial COBRA notice highlights the problem that many employers have inadequate (or non-existent) SPDs.
- The regulations require that the name, address, and phone number of a contact be included in the notice from whom “additional information about the plan and continuation coverage may be obtained”. If an employer uses a generic notice provided by a COBRA administrator which names a contact at the COBRA administration firm, a new notice will need to be sent to all participants if the employer ever changes administrators.

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