

DEPARTMENT OF LABOR REVISES COBRA NOTICE REQUIREMENTS

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The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) protects employees who may lose their health coverage after leaving work, (or after some other qualifying event) as well as their spouses and other qualified beneficiaries. One situation in which COBRA provides this protection, for example, is when an employee takes leave under the Family and Medical Leave Act and then does not return to work, (perhaps to remain home with a new baby or a sick spouse or child). Under COBRA, such an employee may continue as a member of the employer's health plan as long as the employee pays the entire cost of the coverage as well as any administrative costs.

COBRA requires employers to take certain steps to keep employees informed about their rights under the law. Whether employers self-administer COBRA, or have it handled by an outside administrator, the legal requirements are placed on the employer. In May 2004, the Department of Labor revised the notice requirements under COBRA. The new requirements became effective on July 26, 2004, but only apply to plan years whose first day is on or after November 26, 2004. Almost ten years after the law was passed these new regulations finally explain the requirements for the various types of notices that must be given to employees. The regulations are not entirely new because employers have always been required to provide various notices to their employees and qualified beneficiaries. The new guidelines update those requirements and employers need to be aware of the changes. Even though COBRA itself does not apply to public sector employers, the Public Health Services Act, 42 U.S.C.A. § 300bb-8(3)(A, B), contains many of the same requirements as those found under COBRA. These new guidelines primarily deal with four types of notices: 1) A COBRA general notice; 2) An "election notice," which informs an employee or a qualified beneficiary of his or her right to continue health coverage; 3) a notice procedure through which employees can inform health plan administrators of events that may qualify them for COBRA protection; and 4) a notice when COBRA coverage is unavailable or may be terminated in certain circumstances and why.

The purpose of the general notice is simply to explain COBRA to covered employees and their spouses. A separate notice must be provided both to the employee and to his or her spouse. This notice must be given within 90 days of the date that coverage begins under the employer's group health plan. Employers may satisfy this notice requirement by including the required information in a Summary Plan Description, which is a single document that provides employees with all of the necessary COBRA information. The Department of Labor has a sample form that may be used for the general notice. The use of this form is optional, but it satisfies all of the requirements under the law.

The purpose of the "election notice" is to explain to employees who are about to lose their right to employer-provided health care that they have the right to continue as members of the employer's group health plan, so long as they pay the entire premium amount. The election notice must provide the following information: 1) Each qualified beneficiary has a right to elect

continuation of health coverage, 2) The employee or his or her spouse may elect to continue coverage for all of the qualified beneficiaries, 3) The notice must detail the consequences of choosing not to continue health coverage, and 4) The notice must inform the employee of any alternative health coverage options that may be available. The Department of Labor also has a sample form that satisfies the election notice requirement.

The new regulations also require employers to provide procedures by which an employee can advise the plan administrator of a qualifying event. Employees are required to notify the plan administrator of events such as divorce, or a determination of disability, and the Department of Labor wants employers to have a simple, easy to follow, and well-publicized procedure through which employees may provide such notice. There is no sample form provided by the Department of Labor that satisfies this requirement. Employers should, therefore, include a description of these notice procedures in their Summary Plan Descriptions.

The purpose of the fourth notice is to explain to employees that, under certain circumstances, COBRA coverage may be unavailable or may be terminated early. This situation may arise, for example, where an employee does not pay their required premium within the specified time period. This notice must explain why coverage will be denied or terminated, and when that decision will take effect. It must also explain any additional rights the employee may have.

To keep current with these new COBRA requirements, municipalities should contact their solicitors and have them review the notice forms currently being used. The new regulations can be found in the Code of Federal Regulations at 29 C.F.R. §2590.606-1 et seq. More information can be obtained from the Department of Labor's website at www.dol.gov.