

The Corsaro Commentary

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NEW RULES FOR COBRA NOTICES REQUIRE IMMEDIATE ACTION

The Department of Labor (DOL) recently issued proposed rules concerning notification requirements under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). The DOL intends the rules to take effect for plan years starting on or after January 1, 2004. Because we do not expect major revisions in the final version of the rules, we recommend that clients take this opportunity to generally review their COBRA compliance .

If current plan notices and/or procedures do not meet the legal standards, this would be an ideal time to update Summary Plan Descriptions (SPDs) and notices to comply with both current law and the new regulations. Once the regulations are in their final form, employers may have as little as sixty (60) days to comply. Therefore, reviewing current notices and procedures now and adopting new notices and procedures early is certainly advisable.

There are different procedures to follow to ensure compliance with these new regulations depending on how Employers handle COBRA Administration.

1. Employers that outsource COBRA Administration should: (1) review the changes required by the new regulations so you are able to communicate the requirements to the administrator and update health plan SPDs; (2) check with the COBRA administrator to identify its approach to the new rules; (3) update SPDs to include the COBRA procedures the administrator will adopt and follow; and (4) ensure that changes in services and processes are also included in the service contract with the COBRA administrator. The service contract should provide that the provider must meet the timing and content requirements for notices, is specifically required to provide the two new notices required by the rules and is required to provide procedural information to the Employer so it can be included in SPDs. The service contract should provide adequate protections for the Employer.

2. Employers that maintain COBRA Administration In-House should: (1) prepare an initial notice which conforms to the new rules and develop procedures for distributing this initial notice. (**Please note:** any use of or reliance on the 1986 model initial notice should stop immediately. The DOL has indicated that the use of the 1986 model does not constitute good faith compliance with COBRA.); (2) update the notice and election forms which are provided to qualified beneficiaries upon the happening of a qualified event. The new rules require extensive COBRA Rights information to be included in such notices and election forms; (3) establish reasonable procedures for furnishing notices and describe such procedures in your SPDs (your SPDs must be revised accordingly); and (4) provide new notices to employees when COBRA coverage is unavailable and when COBRA coverage ends.

Please contact Corsaro & Associates Co., LPA to review your current COBRA notices and procedures and to update and/or develop new notices and procedures, if necessary.