

Employee Benefits Briefing

A bulletin designed to keep clients and other friends informed on employee benefits law matters

July 2004

FINAL COBRA REGULATIONS REQUIRE EMPLOYER ACTION

The Department of Labor (“DOL”) recently released final regulations governing the timing and content of notices required by the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”). The final regulations virtually mirror the proposed regulations (issued May 28, 2003) with a few minor revisions. Below is a brief description of the final rules and recommendations regarding actions plan administrators should take in light of this new guidance. For a more detailed description of the proposed regulations, see our December 29, 2003 Employee Benefits Bulletin.

OVERVIEW OF FINAL REGULATION

Effective Date. The regulations are effective for plan years beginning after November 26, 2004. Calendar year plans must comply with the regulations by January 1, 2005.

Timing Requirements for the General and Election Notices. The final regulations made no changes to the timing requirements for providing the initial notice (referred to as the “General Notice” in the regulations and as the “in-the-door notice” by some administrators) and the “Election Notice” (referred to as the “out-the-door notice” by some administrators).

- √ The General Notice must be provided to a covered employee, his/her spouse and dependents within 90 days after the

individual becomes covered under the health plan.

- The final regulations permit the plan administrator to supply a single General Notice to an employee and his or her spouse if the two share the same residence. Additionally, the plan administrator is not required to furnish a separate notice to dependent children who live with either the employee or the employee’s spouse.
- Like the proposed regulations, plan administrators may include the General Notice in the plan’s summary plan description (“SPD”). However, providing notice this way could pose problems if a spouse becomes covered under the plan after the employee.

- √ The final regulations require employers to notify their plan administrators within 30 days of certain qualifying events such as termination of employment or reduction in hours. The plan administrator must then provide an Election Notice to the covered employee and any qualified beneficiaries within 14 days after receiving notice of the qualifying event from the employer. If the employer is also the plan administrator, the employer has 44 days to provide an Election

Notice to the covered employee and any qualified beneficiaries.

Model Notices. The final regulations made minor revisions to the model General and Election Notices provided in the proposed regulations. Plan administrators who choose to use the model notices will be deemed to have satisfied their COBRA notice obligations. We recommend that plan administrators either use the model notices or, at the least, refer to the models when updating their current notices to comply with the new regulations.

Procedures for Notices from Covered Employees and Qualified Beneficiaries. The final regulations retained the requirement that health plans have reasonable procedures in their SPDs that inform covered employees and qualified beneficiaries how to notify the plan administrator of certain qualifying events such as divorce or a dependent losing dependent status. If reasonable procedures do not appear in the SPD, any communication from a participant to an employee considered in charge of the plan will trigger COBRA obligations.

SPD Revisions. The final regulations may require that plan administrators either amend health plan SPDs or issue a Summary of Material Modification. SPDs should include: (i) COBRA notice procedures; (ii) a summary of the right to continuation coverage; (iii) a summary of the second 60-day COBRA election period that must be provided for certain trade adjustment assistance eligible individuals under the Trade Act of 2002; and (iv) procedures by which participants and qualified beneficiaries can give notice to the plan administrator of certain qualifying events such as divorce or a child losing dependent status. A revised SPD or a Summary of Material Modification should be prepared for distribution by January 1, 2005.

NEW TYPES OF NOTICES REQUIRED

Notice of Unavailability of Continuation Coverage. A plan administrator must send this Notice when he/she receives notice of a qualifying event from a covered employee or qualified beneficiary and determines the individual is not entitled to COBRA continuation coverage.

Notice of Termination of COBRA Continuation Coverage. If COBRA coverage will cease anytime before the maximum period of coverage (generally 18 months), the final regulations require the plan administrator to notify the qualified beneficiary of such termination.

ACTION REQUIRED

Plan administrators should take immediate action in light of these new rules. Such action should include:

- ✓ updating health plan SPDs or issuing SMMs;
- ✓ reviewing COBRA practices and procedures to ensure compliance with the new timing and content requirements; and
- ✓ developing standardized notices to satisfy the regulation's two new required notices.

Contributing Authors: Christopher T. Collins, Thomas G. Hancuch and Paul F. Russell.

If you have any questions regarding material in this issue of the *Employee Benefits Briefing*, contact Paul F. Russell (*practice leader*) at 312/609-7740 or at prussell@vedderprice.com.

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About Vedder Price

Vedder, Price, Kaufman & Kammholz, P.C. is a national, full-service law firm with more than 210 attorneys in Chicago, New York and Roseland, New Jersey.

Chicago

222 North LaSalle Street
Chicago, Illinois 60601
312/609-7500
Fax: 312/609-5005
Robert J. Stucker

New York

805 Third Avenue
New York, New York 10022
212/407-7700
Fax: 212/407-7799
Neal I. Korval

New Jersey

Five Becker Farm Road
Roseland, New Jersey 07068
973/597-1100
Fax: 973/597-9607
John H. Bradley

www.vedderprice.com

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Employee Benefits Group:

Mark I. Bogart	312/609-7878
Karen N. Brandon	312/609-7732
Christopher T. Collins	312/609-7706
Thomas P. Desmond	312/609-7647
Thomas G. Hancuch	312/609-7824
John J. Jacobsen, Jr.	312/609-7680
Neal I. Korval	212/407-7780
Philip L. Mowery	312/609-7642
Stewart Reifler	212/407-7742
Paul F. Russell (<i>Practice Leader</i>)	312/609-7740
Robert F. Simon	312/609-7550
Kelly A. Starr	312/609-7768
Lawrence L. Summers	312/609-7750
Jonathan A. Wexler	212/407-7732
Charles B. Wolf	312/609-7888