

PERSONNEL NOTEBOOK

For Your Most Important Resource—The Human Resource

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The Mystery of the New COBRA Regulations

Most of us know that new COBRA regulations went into effect on November 26, 2004. But when the Department Of Labor (DOL) announced those new regulations about 6 months earlier, they also announced vigorous enforcement and severe penalties for failure to comply.

It created a mystery that developed into a frenzied flurry of e-mails and phone calls to benefit plan administrators and consultants.

The mystery was that employers couldn't see any differences between the old and the new rules. Almost everyone was already doing what the regulations said they had to do. What was new about the new regulations?

By November, with the regulations staring us in the face, we decided to go to the source and arranged a meeting directly with DOL offices in D.C. With

the help of some very good people at DOL we were able to solve the mystery. But to explain it properly, we're going to have to go back to the basics and look at how the system works.

Congress

And

The Regulatory Agencies

Congress

Congress passes the laws of the country. All laws must be, and can only be, passed by congress. The law defines the end result of what must come to be. But they don't necessarily tell you how to make it happen.

Regulatory Agencies

Agencies, such as Labor (DOL), Justice (DOJ), Health-Education and Welfare (HEW) etc. write and enforce the regulations that tell us how they want it done.

So Congress passed the COBRA act into law in 1986, which required companies (of 20 or more employees) to allow workers to continue some of their employer provided benefits for up to 18 months at the employee's own expense

However, DOL never produced any regulations detailing how it was to be accomplished. In reality, there may have been little need because employers, along with their insurance providers and other assistance, were able to produce the necessary methods to make it all happen.

Then in 2004, 18 years after the law was passed, DOL completed the regulations describing how they wanted you to comply with the law. They even offered further assistance by providing sample forms for you to use.

The law has not changed, but the newly created regulations now tell us more specifically how DOL wants us to comply. However, in that most companies had already devised systems to make it work well, we now had a mystery. Companies couldn't identify the difference between what the new regulations required and what they were already doing.

So to solve the mystery and to also help those companies that have not yet devised workable systems, lets take a look at what the new regulations require.

One Change And Two Additions

A One Change

The law has always required you to notify new employees of their COBRA rights (This is called the "General Notice") and to notify employees who face the loss of their insurance benefits (This is called a 'Qualifying Event) of their opportunity to 'elect' to continue some of those benefits at their own expense. (This is called the 'Election Notice")

The new regulations now require you to add specific information to those notices. The notices must explain the basics of COBRA and to also inform the individual that, in the event that another qualifying event should occur, he/she may be entitled to an additional 18 months of coverage.

In the past there were no guidelines or sample of this notice. With the new regulations, DOL has included a 'Model Notice" (That form is now available in the 'HR University' "FORMS" section)

B. Two Additions

There are two new notifications you must provide employees when applicable.

1. Unavailability Of Coverage

In the event that an individual elects to exercise his COBRA rights, but for some reason he is not eligible, you are now required to send him a statement informing him of his ineligibility and the reason.

2. Notice Of Early Termination

If for any reason an individual's COBRA covered benefits are to be terminated, you must inform him of that termination and the reason.

What Should You Be Doing Now?

It is advised that you:

- Send out a new 'General Notice' using the DOL 'Model Form' on ALCA's website.
- Add a statement to your Employee Handbook informing employees of the basics of COBRA and of the potential for an additional 18 months in the event of a Qualifying Event'.
- Check to assure that all your required postings are up to date and properly displayed. DOL has created inspection teams that are already doing audits on the new COBRA regulations as well as the recent 'Fair Pay Rules. They are automatically checking for those postings.

On the next page is a useful overview of the COBRA notice requirements and the qualifying events that trigger an employee's eligibility..

The mystery may be solved but the new knowledge may now require a lot of action.

Bill Cook
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Summary Of Notice Requirements

- 1 General Notice of COBRA rights to employees and covered beneficiaries. (Within 90 day of coverage)
- 2 Employee must notify Plan Administrator of a Qualifying Event (See below) (Within 60 days) and of a disability. (Within 30 days)
- 3 Company must notify Plan Administrator (If not self insured) of any Qualifying Event. (Within 30 days)
- 4 After receiving notice of a Qualifying Event, the Plan Administrator must provide notice to employee of their right to elect continuation of benefits (Election Notice). (Within 14 days)
- 5 Plan Administrator must send notice to employee of “Unavailability of Coverage” (ineligible), if applicable. (Within 14 days)
- 6 Plan Administrator must give notice of coverage “Termination” to employee if earlier than maximum time period allowed. (must do as soon as practical)

Qualifying Events

<u>Reason for Losing Coverage</u>	<u>Length of Coverage</u>
1 Termination of employment	18 months If individual becomes disabled within 60 days, up to 29 months
2 Reduction of hours	18 months If disabled within 60 days, up to 29 months
3 Divorce	36 months for covered dependents
4 Death	36 months for covered dependents
5 Person losing dependent- Status because of age	36 months
6 Employee becomes entitled- to Medicare	36 months for covered dependents
7 Retirement	Retired employee of a company filing bankruptcy can continue coverage until death. Spouse for an additional 36 months