

H.R. ALERT*

JULY 2004

Employers Take Note - Are You Ready For the New COBRA Notice Rules?

As most employers know, August 23, 2004 is D-Day for the startup of the new overtime regulations under the Fair Labor Standards Act. While the final overtime rules were issued by the Department of Labor ("DOL") in April of this year, they do not become effective until August. Although many publications have covered issuance of the new Fair Labor Standards Act regulations, many employers and publications have overlooked the final notice rules under the Consolidated Omnibus Budget Reconciliation Act (COBRA), that were issued just a month later, in May. Although an employer's obligation under the new COBRA rules won't be triggered until the first day of the next plan year that starts after November 26, 2004, employers should start getting ready immediately. The DOL's final regulations under COBRA contain the minimum standards and procedures for both the timing and the content of notices that plan administrators/employers must provide to employees and their beneficiaries as the result of various qualifying events. Set forth below are some key points employers should note:

What is the Effective Date of the New COBRA Notice Rules?

As noted above, an employer's obligations will not be triggered until the first day of the next plan year that starts after November 26, 2004. What does an employer do in the interim? According to the DOL, employers will be held in good faith compliance if they follow the notice requirements set forth in last year's proposed rules or follow the final rules.

COBRA's General Requirements

As many of our readers know, COBRA requires most employers to give both employees and their beneficiaries the opportunity to continue their health insurance coverage for eighteen months or more when coverage would otherwise be lost due to qualifying events. These "qualifying events" include events such as termination of employment, divorce, or death. If a qualifying event occurs, an employer is obligated to offer continued coverage to an employee, as well as his/her beneficiaries/dependents who are also covered under the plan. Hence, these "qualified" individuals are entitled to notice of qualifying events as are employees who are covered under the plan.

The New Notices Required Under COBRA

The final regulations under COBRA contain new notices that must be issued. Each will be addressed in turn.

A. General Notice

Under COBRA's final regulations, the first type of notice set forth is the general notice of COBRA rights that an employer must give employees (and, of course, their spouses if covered under the plan) when their coverage begins under a group health plan. As a general rule, the notice must be furnished within ninety (90) days after the employee's spouse first becomes covered under the plan. This notice may be included

in the summary plan description provided as a separate notice and/or both. If a qualifying event occurs during this initial ninety (90) day period, an employer can satisfy the general notice requirement by providing the more detailed election notice, which is set forth below. The final regulations contain a Model General Notice and a Model Election Notice that employers may use verbatim. The Model Notice can be accessed online at the following: www.dol.gov/ebsa/regs/fedreg/final/2004011796.htm.

In reviewing the Model General Notice, you will note that it has been modified to reflect guidance from the Internal Revenue Service that an event can be a second qualifying event only if it would have caused a covered spouse or dependent child "to lose coverage under the plan had the first qualifying event not occurred." Additionally, the notice has been revised to clarify that notice to dependent children is not required.

Employers can usually comply with the general notice requirement of both the employee and the spouse by mailing the notice to their joint mailing address. If the general notice however is hand delivered to employees while at work, then a separate notice must also be mailed separately to covered spouses at their home address. Additionally, if a plan must furnish an employee with a COBRA election notice within the initial ninety (90) day period referenced under the general notice requirements, then no separate general notice need be provided.

B. Model Election Notice

The final regulations under COBRA give specific instructions about the election notices that plan administrators must provide to employees and their spouses when a qualifying event occurs. The election notice under COBRA must contain all of the relevant information an individual would need to decide whether to elect COBRA coverage, including available health plan options, premium payment requirements, the consequences of failing to elect COBRA, and how COBRA coverage could be extended due to disability or second qualifying event. To assist compliance, the DOL has provided a model election notice that employers may use verbatim. The notice can be accessed online at the following: www.dol.gov/ebsa/modelectionnotice.doc.

C. Other Required Notices

Under the final regulations, other notices will now be required. For example, if a plan receives notice of a qualifying event from an employee or dependent, it will be required to notify affected individuals if it determines that the individual isn't eligible for COBRA. This is referred to as Notice of Unavailability. Moreover, if COBRA coverage will be terminated earlier than the normal COBRA coverage ending date, the regulations require plans to notify individuals in that event. The second notice is referred to as the Termination Notice.

* H.R. ALERT is intended to provide late-breaking news in the employment arena.

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D. Employers Must Establish Reasonable Procedures

The final rules under COBRA require that employers establish “reasonable procedures” for qualified beneficiaries to notify the plan administrator of a qualifying event. According to the regulations, procedures are deemed to be “reasonable” if they: (1) are described in the Summary Plan Description; (2) specify who is designated to receive notices;

and (3) specify the means qualified beneficiaries must use for giving notice and the required content of the notice.

Practice Tip: What Should Employers Do to Get Ready?

At a minimum, employers should review the final regulations under COBRA and then undertake a thorough review of all plan documents, summary plan descriptions, COBRA notices and forms and procedures to insure compliance with the final regulations. It has obviously been a busy spring for the Department of Labor with the new regulations under the FLSA and the DOL. The question is: are you ready?

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Inquiries concerning topics addressed in the *H.R. Alert* may be directed to Nan Alessandra, Jane Armstrong, Kim Boyle, or David Korn. Your comments, questions, and suggestions are encouraged.

NEW ORLEANS, LOUISIANA

M. Nan Alessandra**	alessann@phelps.com	(504) 584-9297
Jane E. Armstrong	armstroj@phelps.com	(504) 584-9244
Kim M. Boyle	boylek@phelps.com	(504) 679-5790
David M. Korn*	kornd@phelps.com	(504) 584-9374
Sunni D. Jones*	joness@phelps.com	(504) 584-9328

BATON ROUGE, LOUISIANA

Susan W. Furr	furs@phelps.com	(225) 376-0230
Thomas H. Kiggans	kigganst@phelps.com	(225) 376-0247

**Managing and Contributing Editor *Contributing Editor

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PHELPS DUNBAR LLP
—COUNSELORS AT LAW—

NEW ORLEANS BATON ROUGE JACKSON TUPELO GULFPORT HOUSTON TAMPA LONDON

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Thursday, November 4, 2004
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**Our speakers will address “Best Practices” in
key areas of labor and employment law.**

Stay tuned for more details.