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New Model COBRA Notices Issued by Department of Labor

Earlier this month, the Department of Labor (“DOL”) issued a new model COBRA notice and a new model COBRA election form, which it then posted on the DOL website for immediate use by employers. Although using the models (instead of custom-designed COBRA notices and election forms) is not required by the DOL, use of the DOL models is a sensible approach because an employer is deemed to comply with the notice content requirements in the COBRA regulations.

The links to the new DOL model notice and election form are:

- <http://www.dol.gov/ebsa/modelgeneralnotice.doc>
- <http://www.dol.gov/ebsa/modelelectionnotice.doc>

The starting point to understanding the need for the new model COBRA notice and election form is the concept of a “special enrollment period” that pertains to the health insurance marketplaces established as part of federal health care reform. As a general rule, enrollment in a marketplace plan can only occur during the annual marketplace open enrollment period (the next annual open enrollment period for the Connecticut marketplace is November 15, 2014 to February 15, 2015). However, under certain circumstances, special enrollment periods are available without a person having to wait until the next open enrollment period. Loss of coverage from an employer plan is deemed to be one of those qualifying events. As defined in federal regulations, the special enrollment period is the 60-day period from the date of the loss of employer coverage. (For example, if a person terminates employment on May 25, 2014, and the employer coverage would end on May 31, then the special enrollment period would begin June 1 and end July 30, 2014.) Therefore, a terminated employee who suffers a COBRA qualifying event has the right to go to the marketplace and enroll in one of the marketplace plans during this special enrollment period.

The new model COBRA notices contain additional information about the health plans available through the health insurance marketplaces, which became operational on January 1, 2014. As the DOL noted in its press release announcing the new model COBRA notices, the marketplace option is an alternative to COBRA, and may, in many cases, be less costly than the coverage that a person could elect under COBRA. (Of course, the marketplace plan coverage will likely be different coverage than the COBRA coverage the worker could



elect from his or her former employer, so workers need to be careful when comparing their choices.)

The DOL model COBRA election notice also explains that if COBRA coverage is elected, then a subsequent decision to drop that COBRA coverage before the end of the maximum COBRA period (generally 18 or 36 months, depending on the specific qualifying event) is not a qualifying event. So if an individual who has elected COBRA decides he or she would like to end COBRA coverage and enroll in a health plan on the marketplace, the individual would not be able to do so until the next open enrollment period.

Because the U.S. Department of Health and Human Resources (“HHS”) is concerned that some individuals who previously elected COBRA did not fully understand the restrictions on when they could switch from COBRA to the marketplace, the HHS is permitting persons residing in states that offer the federal marketplace (Connecticut is not one of them) until July 1, 2014, to elect a plan through the federal marketplace, even if the person has previously elected COBRA coverage. The HHS strongly encourages states that are running their own state marketplaces to adopt similar special “transition rules,” but it remains to be seen whether the 17 states plus the District of Columbia that offer their own exchanges will decide to do so.

There are currently no rules setting a deadline for when employers need to stop using their existing “old” COBRA notice, but we would encourage employers to switch as soon as practicable.

Questions or Assistance?

If you have questions about this Alert or would like assistance with respect to preparing your company’s updated COBRA notice and election form that conform to your plan requirements (e.g., insured health plans in Connecticut must allow employees to continue their coverage for a period of 30 months), please contact any member of the [Pension and Employee Benefits Practice Group](#).

Additional information (fact sheets, Q & A’s, flyers and posters) about COBRA and how to comply appears on the DOL’s COBRA website: <http://www.dol.gov/ebsa/cobra.html>.

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