

Recent COBRA Developments Require Review of COBRA Policies and Practices

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As summarized below, recent updates to Model COBRA Notices, extensions of deadlines as a result of COVID-19, and an uptick in class action lawsuits stemming from allegedly deficient COBRA Notices, will require a review of employer COBRA Notices and practices.

Update to Model COBRA Notices

In May 2020, the DOL issued revised Model COBRA Notices, which expand the information provided to employees regarding the interaction of COBRA and Medicare and Medicare special enrollment periods. It is common for employer COBRA Notices to track the models provided by the DOL, so employers that do so may want to update their model notices to ensure that they are consistent with the revised models from the DOL.

Extension of COBRA Deadlines due to COVID-19

As we previously reported, the IRS and DOL issued guidance temporarily delaying COBRA deadlines during the period that began March 1, 2020, and ending 60 days after the end of the national emergency that is the current pandemic. This means that the following deadlines currently are delayed until further notice:

- The 60-day deadline by which individuals must inform a plan administrator of a COBRA qualifying event;

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- The date by which a group health plan, plan sponsor, or plan administrator is required to provide the COBRA election notice to a qualified beneficiary;
- The 60-day election period for COBRA continuation coverage; and
- The due date for making COBRA premium payments.

While these extensions are effective, COBRA Notices issued and policies followed during such time must be revised to reflect the delay. In addition, once the national emergency is over, employers will need to notify any affected qualified beneficiaries of the closing of any such election and payment windows that are open only as a result of these extensions.

COBRA Notice Class Actions on the Rise

While class action lawsuits regarding COBRA notices are nothing new, in the past several months, class action lawsuits against large employers for alleged technical COBRA election notice deficiencies have surged. The cases follow a familiar fact pattern in which a former employee who did not elect COBRA and later incurred medical expenses sued the former employer alleging a technically deficient COBRA notice. The cases generally are brought as class actions because all qualified beneficiaries are receiving the same notice. In the case of large employers, these classes can number in the thousands. The technical deficiencies alleged in these lawsuits have included, but not been limited to, that the notices do not sufficiently explain how to elect coverage, that they do not identify the specific end date for the COBRA coverage, that the notices fail to provide the address to which the payments must be sent, or that the notices do not meet the foreign language requirements. While there have yet to be any definitive court decisions resulting from these lawsuits, many large employers have settled out of court for millions of dollars. In order to avoid such potential lawsuits and settlements, employers should review their various COBRA notices against the applicable COBRA regulations to ensure compliance down to the smallest detail, especially in light of the changes described above.

If you have not updated your COBRA notices recently, in light of the above, now would be a good time to do so. Please contact any Laner Muchin employee benefits attorney for further guidance.