



The Vita Viewpoint Important Information for Decision Makers

Material Error in DOL New Model Notice for COBRA Subsidy

Overview

On March 19, 2009, the Department of Labor (DOL) issued four model COBRA notices in response to the COBRA federal subsidy enacted on February 17, 2009. These notices are available for employers and COBRA administrators to use in order to maintain their COBRA compliance given the new notification requirements of the COBRA federal subsidy.

The Details

Vita discovered that the election period outlined on the model COBRA Continuation Election Form is not compliant with the election period as described in the federal COBRA regulations.

The following is the election grace period noted on the DOL's model election form:

"To elect COBRA Continuation coverage, complete this Election Form and return it to us. Under federal law, you have 60 days after the date of this notice to decide whether you want to elect COBRA continuation coverage under the Plan."

The following is the election grace period per the federal COBRA regulations:

A COBRA Qualified Beneficiary has 60 days from the later of: the date of termination of coverage or the date of the notice.

The DOL's model COBRA Continuation Election Form is not compliant; it does not contain language noting the 60 day election period may begin as of the date of termination of coverage.

Risk of Non-Compliance

If an employer were to send the COBRA election package to a Qualified Beneficiary prior to the termination of their active group health coverage (for example, when coverage goes to the end of the month), the model notice implies that the Qualified Beneficiary has an election period that is shorter than it actually should be. The Qualified Beneficiary could argue that if they had more time they would have elected COBRA continuation coverage.

This could lead to liability for the employer if the Qualified Beneficiary were to pursue legal action against the employer for not allowing the full 60 day election period. The ultimate risk to the employer is their financial liability to the Qualified Beneficiary for incurred medical claims if a court concludes that COBRA might have been elected, had the proper election period been provided.

Action by Vita

The DOL and IRS conducted a webcast on March 23, 2009 in response to the release of the model notices. However, the issue of the non-compliant COBRA election form was not addressed. **Vita subsequently notified the DOL and IRS on March 25, 2009 of the error on the model COBRA election form.** Vita is awaiting a response from the DOL and IRS as to when a revised model notice will be released.

Vita's COBRA election packages are fully compliant with both the federal COBRA regulations and the COBRA federal subsidy notice requirements.