

# ARCHER & GREINER

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### *Labor & Employment Client Advisory*

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## Proposed Regulations Change COBRA Notice Requirements

In a proposal that impacts most employers, the United States Department of Labor ("DOL") has proposed new COBRA regulations that impact the timing and the language of COBRA notices. The effective date of the new COBRA regulations is not until January 1, 2004. Nevertheless, the regulations have significant immediate effects for all employers subject to COBRA.

COBRA, the federal law governing continuation of health insurance coverage rights, applies to all private employers with twenty (20) or more employees that have group health plans, except for Church plans. Under COBRA, upon the occurrence of certain qualifying events, such as termination of the employee or a reduction of hours resulting in the loss of health insurance coverage, an employee is entitled to notice of his or rights to continue his health insurance coverage under the employer's group health plan.

The DOL's proposed regulations have several important requirements that all employers subject to COBRA should immediately act upon. First, and most importantly, the DOL has issued a new model COBRA General Notice which should be issued to employees and their spouses within ninety (90) days after coverage under the group health plan begins. This new General Notice supercedes the prior model notice issued in 1986. According to the DOL, employers using the old notice will not be considered to be in good faith compliance with COBRA's requirements. Employers should immediately begin to use the new Model Notice available in the Federal Register at <http://www.dol.gov/ebsa/regs/fedreg/proposed>.

Second, the regulations clarify some timing issues for COBRA notices. Specifically, the employer must provide the plan administrator with notice of a qualifying event within thirty (30) days of that event. The plan administrator then has fourteen (14) days to notify each qualified beneficiary of his or her COBRA rights. The DOL has drafted a proposed COBRA Election Notice, available at <http://www.dol.gov/ebsa/regs/fedreg/proposed> designed for this purpose. Where the employer is the plan administrator, the employer has 44 days to provide qualified beneficiaries with the COBRA Election Notice.

Third, the regulations also contain new notice requirements for plan administrators. Where the plan administrator receives notice of a qualifying event from an employee or family member who is ineligible for COBRA, the plan administrator must notify that individual of his/her determination of ineligibility and the reason for this determination. In addition, the plan administrator must provide notice to each qualified beneficiary of the termination of coverage prior to the full COBRA mandated coverage period for reasons such as plan termination or failure of the qualified beneficiary to timely pay premiums.

Fourth, the regulations also address notice provided by employees and family members of qualifying events. The regulations provide that plan administrators must establish reasonable procedures for the provision of notices by employees and family members in the following cases: divorce or legal separation, loss of dependent status, disability determinations, and upon the occurrence

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of a second qualifying event after an individual becomes entitled to COBRA.

Failure to comply with COBRA can be quite costly and can expose employers and plan administrators to penalties and litigation. Thus, because the regulations impact efforts at good faith compliance right now, employers and plan administrators are encouraged to review their COBRA practices today to determine whether they are in good faith compliance with COBRA's requirements.

Please contact Labor & Employment attorneys, Melissa Wheatcroft at (856) 616-2614 or David Rapuano at (856) 616-2603 with any questions you may have regarding your efforts at compliance with COBRA.