

It Is Time for a COBRA Checkup

MAY 4, 2020

On May 1, 2020, the United States Department of Labor (the DOL) released new FAQs related to the Consolidated Omnibus Budget Reconciliation Act (COBRA). The main focus of the FAQs was to provide [new model notices](#) that address COBRA's interaction with Medicare. A new section titled *Can I enroll in Medicare instead of COBRA continuation coverage after my group health plan coverage ends?* has been added to the model notice. For a more detailed analysis on Medicare and its late enrollment penalties, see our [recent alert](#) that addressed this topic.

What is missing from these new model notices is the most recent guidance the DOL, the Department of Treasury, and the Internal Revenue Service (collectively, the Agencies) released regarding the extension of time granted to COBRA beneficiaries to elect and remit payment of COBRA premiums due to COVID-19. Our [recent alert](#) addresses these new time frames.

There have recently been a number of COBRA cases brought by private plaintiffs and the DOL related to plan sponsors whose COBRA notices did not include all of the details contained in the DOL model notices. Penalties under COBRA can be steep. ERISA § 502(c)(1) grants a district court the discretion to award potential penalties to qualified beneficiaries equal to up to \$110 per day per person for a plan administrator's failure to provide the required initial COBRA notice or the COBRA election notice. In addition, ERISA grants a court the discretion to award legal fees to the plaintiff's counsel under ERISA § 502(g)(1). In addition, the IRS's excise taxes for COBRA violations are up to \$100 per day per individual (i.e., each qualified beneficiary), up to \$200 per day for families (if two or more qualified beneficiaries in a family are affected).

Winston Takeaway: *Plan sponsors should review their current COBRA notices (including notices provided by their appointed COBRA administrator) to ensure the notices contain all of the details provided in the DOL's model notices. In addition, if COBRA notices are issued during the period covered by the COVID-19 guidance issued by the Agencies (linked above), these model COBRA notices should be revised to include the new extensions of time granted for election and remittance of COBRA premiums.*

Please contact a member of the Winston & Strawn Employee Benefits and Executive Compensation Practice Group or your Winston relationship attorney for further information.

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Authors

[Amy Gordon](#)

[Susan Nash](#)

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[Amy Gordon](#)



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