

..... JUNE 2004

Two New Notices

DOL Issues Final COBRA Regulations

On May 26, 2004, the Department of Labor's Employee Benefits Security Administration (EBSA) issued its long-awaited final COBRA regulations clarifying and updating COBRA notice requirements.



The regulations modify in several respects the proposed regulations issued last May. These

modifications include revisions to two model notices which employers can use to comply with COBRA. The regulations are applicable on the first day of the plan year which begins on or after November 26, 2004. For calendar-year plans, this means the effective date is January 1, 2005.

Two additional COBRA notices add substantial new administrative requirements to complicate plan administration, according to attorney Bob Christenson, Fisher & Phillips LLP.

Christenson summarizes four important clarifications in the new regs:

1. Plan administrators must now furnish individuals with an "unavailability" notice to be used if the administrator is notified of a qualifying event by a person who is not eligible for COBRA.

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Investment Education

Consider Taking the 'Advice Plunge'



While fear of being sued has stalled many plan sponsors' desire to offer participants access to investment advice, a new Mercer Investment Consulting report says employers may actually be better off taking the advice plunge.

With low interest in retirement planning among workers in their 20s and 30s, and unrealistic expectations between what American workers dream of doing in retirement and what they are financially capable of achieving, unrealistic expectations abound, according to Merrill Lynch's *2004 Retirement Preparedness Survey*. While much of the plan sponsor's risk in offering investment advice is in the selection of the adviser, MercerIC says that plans without advice components will be laid bare for lawsuits from disgruntled older workers claiming the company didn't properly guide them to save for retirement.

An investment program should help employees develop skills to make informed decisions and take action to improve their financial well being, according to an Ernst & Young Human Capital report, *Educating Pension Plan Participants*. *(Continued on back)*

'Flip Side' of Employee Productivity Shows Significant Consequences to Employers



As the productivity of American workers soared by the largest amount in 20 years in the third quarter of 2003, some economists and HR experts warn that increased productivity means employees are working longer and harder with higher levels of stress and burnout, with significant consequences to employers.

Estimates indicate that worker stress and burnout now cost the U.S. economy \$344 billion annually. Tired and overworked employees have trouble balancing the demands of work and family, and also have more unscheduled absences and higher medical expenses. They file more workers' compensation claims, make more mistakes, and create more waste. According to a 2003 Harris Poll, lower morale also resulted due to reorganization and downsizing, *(Continued on back)*

Final COBRA Regs . . .

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2. Plan administrators must also furnish individuals with an "early termination" notice if a COBRA recipient loses his or her right to coverage before expiration of the maximum 18-, 29-, or 36-month coverage period which applies to the individual.
3. Plan administrators must maintain reasonable COBRA-compliant procedures to be used by participants or beneficiaries to notify the plan that a qualifying event has occurred in those cases in which the participant or beneficiary is required to notify the plan of the event. These procedural requirements are detailed to the point that best practices dictate that the plan develop not only the required procedures, but a fifth COBRA form for use by participants and beneficiaries when they give notice.
4. EBSA believes that a plan should also maintain procedures that define when and under what circumstances an incomplete notice of a qualifying event received from participants or beneficiaries can be rejected by the plan for failure to supply required information.



Finally, remember to update summary plan descriptions (SPDs) to include information about the new COBRA notices and about the COBRA procedures which the plan is adopting. ■

Investment Education . . . (Continued from front)

The program should be based on: helping individuals not just as plan participants, but as employees of the firm; providing participants with skill development; enabling individuals to make decisions; providing a basis for accurate information about decisions; being action oriented and attempting to affect behavior; and seeking a long-term result of improving employees' financial well-being. ■

'Flip Side' of Productivity . . . (Continued from front)

child-care and elder-care challenges, time starvation (finding time for family), substance abuse, depression, and absenteeism. These "symptoms" are the flip side of productivity, and they confront every employer with trade-offs between productivity and the conservation and enhancement of human resources.

The integration of Employee Assistance Programs (EAPs) and related work-life support appear to improve overall productivity in an average of 43 percent of cases, resulting in less interference between job and family life, less negative spillover from job to home, greater life satisfaction, better mental health, greater job satisfaction, more commitment, and higher employee retention, according to a new study by the Families and Work Institute. ■

. Bulletin Briefs

◆ *DOL Launches Fiduciary Education Campaign*

In *Getting It Right—Know Your Fiduciary Responsibilities*, the Department of Labor has partnered with the American Institute of Certified Public Accountants (AICPA) and the Society for Human Resource Management (SHRM) to provide small business employers and plan officials with an understanding of the law and their responsibilities. The program will emphasize the obligation of plan sponsors and other fiduciaries to: understand the terms of an employer's plan; select/monitor service providers; make timely contributions to fund benefits; avoid prohibited transactions; and make timely disclosures to workers and their beneficiaries and reports to the government. For more information or to access a seminar location, see: <http://www.dol.gov/ebsa/fiduciaryeducation.html>.

◆ *Healthcare Costs Top Small Business Problems*

Health insurance, liability insurance, and workers' compensation are the top three problems facing America's small-business owners, according to a National Federation of Independent Business (NFIB)/Wells Fargo study. Findings indicate that no other single problem can touch healthcare costs in terms of either the unanimity or intensity of concern it generates among small business owners. ■

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