COBRA (and other) Extensions Announced by IRS and DOL

May 12, 2020

On April 29th, the Internal Revenue Service (IRS) and the Department of Labor (DOL) jointly announced an extension of certain time frames under COBRA continuation. The extension is intended to benefit individuals who are impacted by the COVID-19 pandemic, the rule implementing these changes was published in the Federal Register on May 4th.

Under COBRA, a qualified beneficiary has 60 days during which to elect continuation coverage and 45 days to pay the initial premium. The law grants a 30-day grace period for each subsequent period. These time frames, combined with the notification period for the employer (up to 44 days), can easily extend the period of time from when an employee loses coverage and when an employer receives an initial payment to five months. Accordingly, we have always advised employers to immediately terminate coverage when someone loses eligibility and then reinstate coverage retroactively if they elect continuation and subsequently pay the initial premium. The majority of qualified beneficiaries never elect continuation, and fewer still actually submit the initial premium.

In 2009, under the American Reinvestment and Recovery Act (ARRA), the federal government subsidized COBRA premiums for displaced workers. According to a report commissioned by the DOL, the COBRA "take-up" rate increased by 15.5% as a result of the subsidy. Although there have been growing calls for a similar subsidy during the coronavirus pandemic, congress has yet to authorize one.

The announcement from the DOL of a COBRA extension has led to some confusion and comparisons to the ARRA subsidy with assumptions that it provides a similar benefit. Put plainly, it does not. It simply changes the date from which a qualified beneficiary must elect coverage and pay premiums. This is a significant change but does not result in free or subsidized coverage. Premiums must eventually be paid in full and each month that goes by increases the amount which will ultimately be due. Under the temporary rule, the election period will no longer be measured from the day the COBRA notice is provided, but 60 days "after the announced end of the National Emergency or such other date announced by the agencies in a future notification." Payment grace periods will be similarly extended. Since we don't know when the National Emergency order will end, the opportunity to elect and pay for COBRA will essentially remain open for many months.

The extension does not just apply to COBRA, but to several other ERISA time frames, including special enrollment periods, disability determinations, claim submissions, claim appeals and claim reviews.

The COBRA implications may be the most challenging for employers as it greatly extends an already long time period for a qualified beneficiary to elect coverage and pay premiums. This is not just true for individuals who newly elect continuation, but also individuals already on continuation, who may now delay further premium payments.

Finally, employers who self-administer COBRA should review updated model notices issued by the DOL on May 1st. This is the first update to the model notices in some time. The new notices do not address the extensions outlined above but do include new information on Medicare. The DOL model notices are not mandatory and an employer could use their own notice, if they wish, but utilizing the model notices is a good way of demonstrating good faith compliance and reducing legal exposure.

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