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What's New in the 1st Qtr. 2012 Edition

This What's New section highlights the changes made in the last quarter to the *COBRA: The Developing Law* guidebook—the authoritative guidebook for employers, administrators, and advisors.

Also see the 1st Qtr. 2012 *Current Developments* newsletter, which can be accessed under the Bookmarks tab. The *Current Developments* newsletter summarizes important legal developments that occurred during the quarter.

- **Section III—COBRA: Sources of Law.**
 - III.G.3—*Prohibition Against Rescission and COBRA*. We have revised the discussion of the health care reform prohibition on rescissions and how it interacts with COBRA, including new examples involving early termination of COBRA coverage.
 - III.G.4—*Expanded Claims and Appeals and External Review Rules and COBRA*. We've expanded the discussion of the health care reform claims and appeals and review rules and how they interact with COBRA.
 - III.G.7—*Medical Loss Ratio Standards and COBRA*. We have updated the discussion of the health care reform medical loss ratio rules and how they interact with COBRA for recent agency guidance on medical loss ratio rebates.
 - III.G.8—*W-2 Reporting: Cost of Employer-Sponsored Health Coverage*. The discussion of the health care reform W-2 reporting requirement has been updated for recent IRS guidance amending previous guidance on reporting health coverage.
 - III.G.9—*COBRA Disclosure in the Summary of Benefits and Coverage (SBC)*. We've updated the discussion of the health care reform four-page summary of benefits and coverage requirement for recent agency FAQs about possible changes to the templates and timing of compliance with the requirements.
- **Section IV—What Employers Are Subject to COBRA?**
 - IV.D—*Indian Tribal Governments*. The discussion of Indian tribal governments health plans as governmental plans and whether they are subject to COBRA has been updated for recent guidance about the determination of governmental plan status for these entities.
- **Section VII—Qualifying Events: What Triggers COBRA?**
 - VII.L—*Special Issues: Leaves of Absence*. We revised our discussion of the interaction of COBRA and various types of leaves of absence with an updated table of cases involving COBRA issues arising with leaves of absence.
- **Section XV—The COBRA Initial Notice, the SPD, SBC, and other Disclosure Issues.**
 - XV.R—*Requirement to Furnish SBC*. We have updated the discussion of COBRA disclosures and the four-page summary of benefits and coverage for recent guidance affecting the disclosures and the timing of compliance.
- **Section XVIII—COBRA Election Notice and Notice of Unavailability.**
 - XVIII.I—*Each Qualified Beneficiary Must Be Furnished the Election Notice*. We've updated the discussion of the substantiation of qualified beneficiary addresses with a recent case that concluded that a TPA did not send an election notice to the employee's last-known address that the employee had updated in the employer's online employment records database.
- **Section XXIII—Notice of Termination of COBRA Coverage.**
 - XXIII.G—*Applicability of Claims Regulations to Notices of Termination of COBRA Coverage*. We have revised the discussion about the application of the claims regulations to rescissions and the impact on retroactive early terminations of COBRA coverage.

- **Section XXIV—Mistakes Happen: Identifying, Correcting, and Preventing COBRA Compliance Problems.**
 - XXIV.A—*Identifying Common Compliance Mistakes.* This discussion has been reorganized, and compliance mistakes have been grouped into categories to help identify common types of errors.
 - XXIV.B—*Correcting Failures to Offer COBRA Coverage and Other Notice Failures.* We added a discussion of the challenges of correcting mistakes by offering retroactive COBRA coverage for health FSAs. We've also included an analysis and example regarding correcting COBRA mistakes in health FSAs with a prospective offer of COBRA coverage.
- **Section XXV—Consequences of Failing to Comply With COBRA.**
 - XXV.B—*Excise Taxes Under the Code.* We have updated the discussion of reporting excise taxes for COBRA failures on the Form 8928 for the new version of the Form 8928.
 - XXV.C—*Statutory Penalties for Failure to Provide Certain COBRA Notices.* We've updated the discussion of penalties assessed for failure to provide a COBRA notice for recent cases, including a case in which the court awarded the maximum penalty amount based on the existence of bad faith in the employer's attempt to mislead the court on factual matters. We've also included a recent case in which the court considered the employer's reinstatement of COBRA coverage as a factor in determining the penalty, but concluded that reinstatement did not negate the appropriateness of a penalty to induce the employer's compliance.
 - XXV.H—*Procedural Issues in COBRA Lawsuits Under ERISA.* We have updated the discussion of the exhaustion of administrative remedies on COBRA lawsuits, as well as the discussion of the application of the claims regulations to COBRA claims.
- **Section XXXII—Special Issues: COBRA and HIPAA.**
 - XXXII.E—*HIPAA Guaranteed Availability.* We have updated the discussion of the interaction of COBRA and HIPAA's guaranteed availability of individual insurance policies without preexisting condition exclusions for health care reform rules that will eventually eliminate all preexisting condition exclusions.
- **Section XXXIV—Special Issues: The Health Coverage Tax Credit (HCTC) and the Special Second COBRA Election Period.**
 - XXXIV.C—*Health Coverage Tax Credit (HCTC) for Eligible Individuals' COBRA Premiums.* The health coverage tax credit discussion has been updated for IRS clarifications regarding the application of recent legislation extending certain provisions of the Trade Act.
- **Section XXXVII—Special Issues: COBRA Premium Assistance.**
 - XXXVII.C—*COBRA Premium Assistance.* We have updated the discussion of the COBRA premium subsidy for the expiration of the program for most individuals.
 - XXXVII.G—*Premium Reduction Notices.* We've updated the discussion of the COBRA premium subsidy notices for the expiration of the program and the notice requirement for most individuals.
- **Appendix Tab 10.** We have also made the following changes to our sample documents:
 - *Sample Notice of Termination of COBRA Coverage.* We have revised the sample notice of termination to take into account issues raised by the application of the claims procedure requirements to retroactive terminations of COBRA coverage that involve a rescission of coverage.
 - *Model Notices for COBRA Premium Reduction (Annotated).* We've eliminated these model notices regarding the COBRA premium subsidy since the notice requirement has generally expired.

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Substantive Changes to the Appendix:

- **Tab 10—Sample Documents**
 - Updated TOC
 - Updated Guide to Sample Notices
 - Updated Sample Notice of Termination of COBRA Coverage

Lots More to Come! From the feedback we've received, we know that our manuals are the premier group health plans resources in the country. But here at EBIA we're not satisfied. We are constantly striving to make the manual even better. In upcoming editions, look forward to complete coverage of all legal developments affecting COBRA compliance, and to our further analysis of existing law, with more examples and Q/As, etc.

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