

COBRA Administration – New Forms and Guidelines

JUNE 2014

The Department of Labor (DOL) on May 2, 2014, released a new model general notice form and model election notice form for providing COBRA notices to employees. These new notices and forms allow for participants to be away that in lieu of continuing with the current insurance carrier, the participants can also look at the Marketplace for benefit. Please see the model forms at <http://www.dol.gov/ebsa/cobra.html>

COBRA administration can be handled by either the employer or through a third-party administrator, but as the legal obligation still falls to the employer to comply with the law. It is prudent for the employer to make sure these administrative steps are being completed and done so in a timely manner.

COBRA Administration requires that employers meet four basic compliance points:

1. Notifying all eligible group health care participants (not just employees) of their COBRA rights.
2. Providing timely notice of COBRA eligibility, enrollment forms, duration of coverage and terms of payment after a qualifying event has occurred.
3. Collecting premiums, reinstating coverage and supplying appropriate notices if premiums are not received.
4. Providing timely notices when COBRA coverage ends before expected duration. Also responding to those seeking coverage who are not eligible for COBRA.

Initial Notification

Employers must ensure a COBRA general notice is provided to all eligible group health care participants **within 90 days of becoming eligible to participate** in the group health plan. So if an employee is hired April 1 and becomes eligible for benefits on their date of hire, the notice must be sent to all participants (family, dependents, etc...) within 90 days. This is generally communicated through by the employer sending a letter to the employee or sent by first-class mail to the home address with employee's name and "& Family" if applicable. This correspondence should include the general notice in the Summary Plan Description (SPD).

Qualifying Event Notices

When employees or dependents experience a qualifying event, the employer should provide an election notice within 14 days of the notice of qualifying event, notifying them of their eligibility to enroll in COBRA coverage, the terms and amount of the premium payment, and the beginning and ending dates of coverage. Employers who are also plan administrators have 44 days to provide the election notice to the employee and any eligible dependents. Send all correspondence by first-class mail and keep a log of letters sent, or obtain a certificate of mailing. Employers should avoid sending any correspondence certified mailing, as a returned receipt with no delivery acceptance signature proves the participant did NOT receive the required notice.

Notify Insurance Carrier

Employers should notify insurance carrier that the employee's group coverage has ended and the COBRA election form has been provided. If COBRA is elected, insurance will be reinstated as of the date group coverage ended.

Election and Payment

If COBRA coverage is elected within 60 days of when the election notice was sent, allow 45 days from date of election for the initial premiums owed to be paid. Once received, notify insurance carrier to reinstate coverage back to initial end date so there is no gap in coverage. If employee continues to pay premiums on a timely basis, and no secondary qualifying event or allowable reason for early termination occurs, no further action is needed other than sending the HIPAA-required Model Certificate when COBRA coverage ends.

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*If you have any
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If COBRA coverage is not elected within 60 days of when the election notice was sent, the employer's obligations end and no further action is required other than to send the HIPAA-required Model Certificate as soon as practicable.

Late or missing payments

If at any time premiums are not received by the established due date, the employer must allow a **30-day grace period to receive the premium**. In order to cancel coverage should the premium not be received within the 30-day grace period, the employer must provide a written notice to the COBRA participant 15 days before the end of the 30-day grace period indicating that coverage will end if payment is not received by the 30th day. If payment is still not received by the end of the

30-day grace period, the employer may cancel coverage and must provide a written Notice of Termination of Coverage and a HIPAA Model Certificate as soon as practicable.

At times, the participant will send only a partial payment of the premium. If the shortfall in payment received is no greater than \$50 or 10% of the amount due, it must be accepted as payment in full unless the employer sends a notice indicating the amount still due and gives adequate time (30 days) for the shortage to be paid.

If you have any questions about COBRA Administration, please contact your Account Manager or Producer.

Are You Ready for a Department of Labor Health Plan Audit?

When employers receive an audit notice from the Department of Labor, the risk management and compliance alarms go off! There are many key documents and compliance logs that the DOL may request during the audit related specifically to health plans and documentation – ***are you ready?***

The necessary documentation goes beyond producing Summary Plan Description packets. Specific language and key wording for ACA compliance and other statutory obligations are essential and non-negotiable with the Department of Labor.

For most employers, health care plans, documentation and its compliance is a daunting task that does not become a focal point till the employer may already be in jeopardy. Employers should take into account some of the following:

- Is a group grandfathered under ACA or not as this will differentiate the necessary documentation and compliance and compliance obligations.
- Are they HIPAA compliant?
- Are HIPAA notices and forms correct with the most up to date information?
- Do you have logs and documentation that prove you sent health plan related information and other statutory obligations notices to participants?
- Do the employer's payroll records match the insurance premiums collected and sent to carriers, and were payment made timely?



This article just touches the surface on what employers may expect in a DOL Health Plan Audit. Marshall and Sterling has a wealth of resources and scope of services available to clients to assist in ensuring clients has the necessary information and documentation. **If you have any questions about your health care plan compliance piece, please contact your Account Manager or Producer for more information.**

6 Factors for Deciding Whether to Pay Interns



Are you planning to hire interns this summer? While it can be tempting to allow such individuals to volunteer at your place of business or pay less than the minimum wage, the fact is that **internships are most often considered 'employment'** subject to the federal minimum wage and overtime rules.

The Fair Labor Standards Act

Under the federal [Fair Labor Standards Act](#) (FLSA), interns in the for-profit private sector who qualify as employees typically must be paid at least \$7.25 per hour, and not less than one and one-half times the regular rate of pay after 40 hours of work in a workweek.

Note: When both the FLSA and a state law apply, the employee is entitled to the most favorable provisions of each law. Be sure to check your state wage and hour laws for applicable requirements.

The Test for Unpaid Interns

There are some circumstances under which individuals who participate in for-profit private sector internships or training programs may do so without compensation. The determination of whether an internship or training program meets this exclusion depends upon **all of the facts and circumstances**. The [U.S. Department of Labor](#) uses the following six criteria which must be applied when making this determination:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If **all** of the factors listed above are met, an employment relationship likely does not exist under federal law, and the FLSA's minimum wage and overtime provisions do not apply to the intern. (This exclusion is narrow, because the FLSA's definition of 'employ' is very broad.) Visit our [Employee Pay](#) section for information on other common federal wage issues.

2015 HSA Contribution Limits and Minimum Deductibles

The IRS has released the [2015 inflation adjusted amounts](#) for health savings accounts (HSAs). To be eligible to make HSA contributions, an individual must be covered under a high deductible health plan (HDHP) and meet certain other [eligibility requirements](#).

High Deductible Health Plan Coverage

An HDHP has a higher annual deductible than typical health plans and a maximum limit on the sum of the annual deductible and other out-of-pocket expenses. For 2015, the minimum annual deductible is \$1,300 for self-only coverage or \$2,600 for family coverage. Annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) may not exceed \$6,450 for self-only coverage or \$12,900 for family coverage.

(An HDHP may provide certain preventive care benefits [without a deductible](#), as required under Health Care Reform.)

Annual HSA Contribution Limitation

An eligible employee, his or her employer, or both may contribute to the employee's HSA. For calendar year 2015, the annual limitation on HSA deductions for an individual with self-only HDHP coverage is \$3,350. For an individual with family coverage under an HDHP, the annual limitation on HSA deductions is \$6,650. The limit is increased by \$1,000 for eligible individuals age 55 or older at the end of the tax year.

You can learn more about HSAs in our section on [Health Savings Accounts](#).

Employee Benefits and Same-Sex Marriage: Where Things Stand One Year Later

It has been nearly one year since the U.S. Supreme Court invalidated part of the Defense of Marriage Act (DOMA), which denied federal benefits to legally married same-sex couples. While the legality of same-sex marriage continues to be challenged in the states, federal agencies have issued significant guidance in the past year implementing the DOMA decision:



1. Employee Benefit Plans

The terms "spouse" and "marriage" in Title I of ERISA (the federal law setting minimum standards for most benefit plans) and in related agency regulations will [generally be read](#) to include same-sex couples legally married in any state that recognizes such marriages, regardless of where they currently live. Among other provisions, Title I includes [COBRA](#) continuation coverage requirements and the [HIPAA](#) portability rules.

2. Federal Tax Guidance

Same-sex couples, legally married in jurisdictions that recognize their marriages, [will be treated as married](#) for all federal tax purposes (including employee benefits). More specific IRS guidance includes:

- [Q&As](#) regarding the participation by same-sex spouses in cafeteria plans, HSAs, and health FSAs;
- [Notice 2013-61](#) establishing special procedures for correcting overpayments with respect to employee benefits provided to same-sex spouses (including employer-provided health coverage); and
- [Q&As](#) on how the ruling affects qualified retirement plans.

3. FMLA-Specific Guidance

Updated [agency guidance](#) clarifies the definition of "spouse," for purposes of the federal Family and Medical Leave Act, to mean a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage and same-sex marriage.

For guidance on same-sex marriage laws specific to your state, visit our [State Laws](#) section, click on your state and select "Same-Sex Relationships" from the left-hand navigation menu.

Marshall & Sterling Insurance will continue to provide you with updates and information regarding important issues. Should you have specific questions or need more information, please contact us.

Regina Murdock
Human Resources Services Specialist
914-962-1188, x2487
rmurdock@marshallsterling.com

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