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New Model COBRA Notices and Increased COBRA Litigation: What Employers Should Do Now

Authors: Andrea Bailey Powers

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On May 1, 2020, the U.S. Department of Labor (DOL) released the first updates to its model COBRA notices since 2014. The models are for (i) the initial notice (provided to employees and covered spouses within the first 90 days of coverage under the group health plan), and (ii) the election notice (provided to qualified beneficiaries within 44 days after the qualifying event resulting in a loss of coverage). The model notices can be found at the DOL's website.

While it is not required that employers use the model notices, doing so should serve as a "safe harbor" against challenges for improper notices to qualified beneficiaries. This is especially relevant as there has been a significant increase in the number of individual and class action lawsuits filed against employers for failing to provide adequate COBRA notices. The COBRA statute provides for penalties of up to \$110 per day per qualified beneficiary for failure to comply with these notice requirements and plaintiffs are aggressively seeking these penalties. For example, if an employee with a spouse and two children is terminated and thus becomes COBRA eligible, that employee may attempt to prove that he did not receive a compliant COBRA notice. If 90 days go by the penalty could be \$39,600.

While many employers outsource their COBRA administration to third-party service providers, the liability for COBRA compliance rests with the sponsoring employer. With the release of new model notices and the uptick in COBRA litigation, now is a good time for employers to review all of their COBRA policies and procedures, as well as their administrative service agreements with third-party service providers.

Our trained attorneys can guide you through this process. For more information, contact [Andrea Powers](#) or any member of [Baker Donelson's ERISA team](#).