HR Q&A

Legal Compliance

Courtesy of Meridian Benefits Consulting

Q: What internal procedures must be in place regarding COBRA administration?

A: The Consolidated Omnibus Budget Reconciliation Act (COBRA) contains several rules that require a plan to have procedures in place. It is important to follow these procedures in order to avoid non-compliance with COBRA's requirements and to avoid extending coverage unnecessarily or for too long.

The notice rules require that plans have "reasonable" procedures in place so that covered employees and qualified beneficiaries (QBs) can notify the plan administrator of these events:

- A qualifying event, such as the divorce or separation of the covered employee or a dependent child losing dependent status under the plan
- Second qualifying events, which are triggering events that occur during the period of COBRA coverage that would have caused a loss of coverage under the plan if the QB was still covered
- SSA disability (or cessation of disability)

In order to be considered reasonable, the procedures must:

- Be described in the summary plan description
- Specify the individual or entity that should receive the notice
- Specify how notice is to be given (for example, in writing or on a specific form)
- Describe the information required (such as the QBs involved, the date of the event, the nature of the event, the plan name and any additional documentation the plan administrator may require, such as a copy of a divorce decree)
- Specify the timeline for giving notice
- Provide for the proper handling of incomplete notices

In general, individuals must provide a notice of a qualifying event or determination of disability within 60 days. Disability determination notices must be given before the end of the initial 18-month COBRA coverage period. In addition, QBs must notify the plan administrator within 30 days of a determination that they are no longer disabled.

If the plan does not have reasonable procedures for these notices, a QB may be considered to have given notice if he or she has communicated a specific event in a manner reasonably calculated to inform those customarily considered responsible for the plan.

A plan should also have procedures in place for complying with rules for election of COBRA coverage. For example, a QB must be given at least 60 days to elect COBRA. The election period begins on the date the election notice is provided or the date on which coverage would be lost (whichever is later). Also, each QB has an independent right to elect COBRA, a covered employee or spouse can elect on behalf of all other QBs, and a parent or guardian can elect on behalf of a minor child. A QB may also revoke a prior waiver of COBRA coverage during the election period. A plan administrator who fails to follow the procedures regarding elections increases the risk of QBs filing claims.

A plan may charge a premium for providing COBRA coverage. QBs must make premium payments in a timely manner, and a plan administrator has some flexibility in designing its procedures. However, the COBRA rules do set forth guidelines for payments. The initial premium is due 45 days after the COBRA election is made. After that, the premium due date is usually the first day of the month. However, the plan must allow a 30-day grace period for payment before discontinuing coverage for non-payment.

In addition to complying with the COBRA rules, a plan should have procedures in place for dealing with issues that may arise in the day-to-day administration of COBRA coverage. For example, a plan will need a process for ensuring that premium payments are forwarded to insurers in a timely manner. Also, a plan should prepare for a situation where a QB makes late or short payments.