

## COBRA/SPOUSAL NOTICE REQUIREMENT

COBRA requires administrators of group health plans to notify Qualified beneficiaries (covered employee and any covered spouse or other dependents) at the time of any Qualifying event (such as termination of employment) of their rights to continue group health coverage upon payment of the cost of such coverage.

Qualified beneficiaries in the same family may have rights to COBRA notices at different times. For example, the spouse of a newly-married participant is required to receive notice of COBRA rights upon initial coverage of the spouse by the group health plan. A covered dependent who attains age 22 or is no longer a full-time student will be entitled to a COBRA notice if, as a result, he no longer qualifies for dependent coverage.

Courts have considered whether notice to a covered employee constitutes notice to the employee's covered dependents. Although minor dependents living at the same address may be deemed to be properly notified if the COBRA notice is addressed to the employee, courts have held that proper notification to a covered spouse requires a separately addressed notice.

A recent U.S. Court of Appeals decision (Underwood v. Flour Daniel, Inc., 1997 U.S. App. Lexis 1410, 4th Cir., 1997) found that a separate notice addressed to a spouse is required even if it is clear that the spouse was fully aware of her COBRA rights.

In Flour Daniel, Inc., the employee was laid off. He and his spouse elected COBRA coverage, but made only one premium payment. As a result, the COBRA coverage ceased. The ex-employee and his wife sued for payment of medical claims arising after the termination of COBRA coverage because no separate COBRA notice was sent to the wife. The Court held that, because the ex-employee and his wife clearly had knowledge of their COBRA rights, they would not be entitled to recover benefits under the group health plan. In other words, they were not prejudiced by the failure of Flour Daniel, Inc. to provide the wife a separate COBRA notice. However, the Court went on to award statutory damages of \$100 per day for 365 days because of the employer's general disregard for COBRA's separate notice requirement.

Although not all courts may follow the Flour Daniel, Inc. decision, its lesson to employers subject to COBRA is clear. You must send separate COBRA notices to covered spouses to avoid possible statutory sanctions or, even worse, liability for group health benefits as if the spouse had elected COBRA coverage. And remember, qualified beneficiaries are entitled to notice of their COBRA rights both at the time of initial coverage as well as upon the occurrence of a qualifying event.

Andrew S. Williams  
Aronberg Goldgehn Davis & Garmisa  
One IBM Plaza, Suite 3000  
Chicago, Illinois 60611  
312/755-3145  
[awilliams@agdelaw.com](mailto:awilliams@agdelaw.com)