



ROBINSON & COLE LLP

## Employee Benefits & Compensation



### Welcome to Robinson & Cole's New and Improved Benefits e-News Format

Today's publication may look a bit different, but it contains the same timely information you have come to expect every month from Robinson & Cole's Employee Benefits and Compensation Group. You can still use quick links to recently released regulations, ERISA publications, and reported court decisions, but now in an easier-to-read layout. The type size was increased to enhance on-screen viewing. The content will resize automatically to fit your monitor and your printer. If you have difficulty printing, go to \*\* on the right column.

Basic tasks such as navigating, obtaining additional subscriptions, investigating details of a reported item, or suggesting topics have moved to the right column. You will also find Benefits e-News Archives here. Click on the Archives link and you will find a full-text search engine to locate specific topics.

We hope you continue to enjoy Benefits e-News. Let us know if you like our new format and which additional features you would like to see in future editions.

### New Compliance Assistance Program Announced By Department Of Labor

The DOL's newly renamed Employee Benefits Security Administration has announced a new program designed to assist employers and health plans in complying with the numerous obligations under ERISA's health laws:

- The Health Insurance Portability and Accountability Act limits a group health plan's ability to impose pre-existing condition exclusions and provides special enrollment rights.
- The Mental Health Parity Act requires parity in the application of annual and lifetime dollar limits on mental health benefits with annual and lifetime dollar limits on medical benefits.
- The Newborns' and Mothers' Health Protection Act requires group health plans that offer maternity hospital benefits for mothers and newborns to pay for at least a 48 hour hospital stay for the mother and newborn following childbirth (a 96 hour stay, in the case of cesarean section) unless the physician decides to discharge earlier.
- The Women's Health and Cancer Rights Act provides protection for patients who elect breast reconstruction or other follow up care in connection with a mastectomy.

The DOL has reported that its audit of health plans has revealed that the most significant area of non-compliance involves providing requisite notices. The DOL's new Health Laws Notice [Guide](#) provides employers with a convenient summary of the notice requirements for each of these laws and sample language that can be used when providing the applicable notices. The DOL has also provided a helpful self-audit checklist that can be used by an employer to check whether or not its health plan is in compliance with all relevant laws.

### Employer Penalized for Failing to Timely Send a COBRA Notice

In O'Shea v. Childtime Childcare, Inc., a Federal District Court in New York awarded a \$2,300 penalty to a former employee, Maura O'Shea, who had not been provided with a COBRA notice upon her termination of employment. Ms. O'Shea did not obtain other health coverage for two months following her termination. The Court found that she had suffered actual prejudice because of her employer's failure to provide her with a COBRA

notice since she had incurred medical expenses during the two month period that she was without coverage. The Court imposed a \$50 per day penalty starting from the date on which the notice should have been provided to Ms. O'Shea and ending on the date that Ms. O'Shea obtained new health coverage. Ms. O'Shea was also granted the ability to claim attorneys' fees for her claim.

This case serves as a reminder to employers of the importance of timely providing COBRA notices. A Court can award a qualified beneficiary up to \$100 per day from the date on which notice should have been sent until the date new health coverage is obtained. If an employee does not timely obtain substitute coverage, an employer faces the possibility of a substantial penalty for failing to provide a COBRA notice.

#### **House Committee Approves Pension Reform Legislation**

On March 6, 2003, the House Education & the Workforce Committee passed the Pension Security Act. The Act is identical to an Act passed by the House last spring in response to the tremendous losses to employee retirement plans caused by the Enron and other corporate scandals. The Act seeks to protect workers' retirement savings by providing participants with an increased right to diversify investments in plans requiring investment in employer stock, and by providing greater incentives to employers to provide participants with opportunities to receive investment advice. The Act also requires that plans provide quarterly benefit statements to participants, a requirement that is already being met by the majority of defined contribution plans.



Less Than 30 Days To Go

The compliance date for the HIPAA privacy regulations for most plans and covered providers is April 14, 2003, and is less than a month away. Covered entities should be in the process of completing their compliance activities. Such activities generally include (but are not limited to):

- appointing a privacy official,
- developing safeguards within your organization,
- finalizing business associate agreements,
- adopting policies and procedures, and
- training your workforce.

The Office of Civil Rights at the U.S. Department of Health and Human Services (HHS) has enforcement authority over covered entities with respect to HIPAA's privacy regulations.

This is an archive of past issues. As a result, it may contain information that is not current.

**ROBINSON & COLE<sub>LLP</sub>**

