

# Why Employers Need to Re-Evaluate COBRA Compliance

## COVID-19 Changes to COBRA

On May 1, the Department of Labor (DOL), and the Internal Revenue Service (IRS) issued a [final rule](#) and [guidance](#) on extending various benefits-related deadlines in light of the COVID-19 pandemic that raises new concerns regarding the technical requirements that make up a COBRA election notice. The impetus for these new rules was to prevent plan participants and qualified beneficiaries from losing coverage as a result of layoffs or reductions in hours. These extensions apply to a myriad of statutory periods under ERISA. In addition to these new deadlines, the DOL also revised the model notices and accompanying [FAQs](#).

## COBRA Deadline Extensions

In the joint notice, the DOL and IRS extend various timeframes during a defined “Outbreak Period.” This “Outbreak Period” extends from March 1 until 60 days after the announced end of the national emergency caused by COVID-19. This means that the timeframe an individual has for electing COBRA coverage is tolled during the “Outbreak Period.”

For example, Sara works for Employer A and is enrolled in A’s group health plan. Sarah loses eligibility for coverage on May 31 due to the reduction in work hours. The plan provides Sara with a COBRA election notice on June 1, 2020. Assume the COVID-19 National Emergency ends May 31, 2020, meaning the Outbreak Period ends on July 30, 2020 (60 days after May 31). Sara’s 60-day COBRA election period does not begin to run until Jul 31, 2020 and she has until September 28, 2020 to elect COBRA coverage. If Sara elects COBRA coverage, she has forty-five days to pay premiums for coverage retroactive to June 1, 2020, resulting in a significant premium payment.

## DOL New Model Notice Forms

In addition to these new extension deadlines, the joint notice also included updated COBRA model notices. While the use of the DOL’s model election notice is not required, the [DOL has indicated](#) that the use of the model notice by employers and plan administrators will be deemed to constitute compliance with the COBRA notice requirements. The only difference in the updated 2020 model notices from the 2014 model notices is that the former contain details highlighting the interaction between Medicare and COBRA. Nonetheless, plan administrators who previously relied on the DOL’s COBRA model election notice should review and implement the updated [model election notice](#) to ensure continued compliance.

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Interestingly, the new model election notice form is silent with respect to the additional deadline extensions created by the DOL and IRS. This further complicates the ability for employers to craft compliant COBRA election notice forms because the new rules state that effective plan administration requires plan administrators to act in good faith and reiterates plan administrators' fiduciary responsibilities to "[act reasonably, prudently, and in the interest of the covered workers and their families](#)." This fiduciary responsibility includes providing "[reasonable accommodations to prevent the loss of benefits or undue delay in benefits payments](#)." With the rise of class action litigation before COVID-19 regarding deficient election notices, employers need to be even more diligent in providing compliant COBRA election notices.

Due to the recent changes regarding new deadline extensions, and the new model notices issued by the DOL and IRS, as well as the recent class action litigation regarding COBRA election notices, employers should carefully review their COBRA election notices. In addition to the election notice, there are other complex COBRA requirements that are beyond the scope of this article. Vandennack Weaver is here to help you navigate these new requirements and help your business undergo a comprehensive review of your COBRA compliance. Please contact Vandennack Weaver attorneys at 402-504-1300 and check out our [COVID-19 webpage](#) for ongoing updates.