

## **COBRA Rights of Public Employees May Arise From Two Different Statutes *(part 1)***

In a recent district court case interpreting a government employer's duty to send COBRA notices, the fact that COBRA can be applied under two federal statutes was highlighted.

The first is ERISA which primarily applies to private employers. However, there is a second federal statute that applies to local governments, and that statute is the Public Health Service Act (PHSA). The Public Health Service Act applies to state governments and state agencies. The difference between the two acts, and the applicability to a local government such as a county, may have interesting implications on the exact details of COBRA regulations and remedies.

Certain ERISA provisions do not apply to governmental plans. This includes a plan established and maintained for its employees by the government of the United States, by the government of any state or local political subdivision thereof, or by any agency or instrumentality of any of the foregoing. See ERISA Sec. 3(32).

The PHSA requires such state and local governments to provide COBRA coverage to eligible employees (except for those with fewer than 20 employees on a typical business day). While ERISA specifically has COBRA rules, PHSA has never had specifics adopted so the rules come from COBRA and court interpretations of COBRA applicability. So what are the differences in the required COBRA coverage provisions?

### **Differences between the two COBRA provisions**

<b>COBRA</b>	<b>PHSA</b>
Civil Penalties of up to \$110/day	No civil penalties
Retroactive Coverage under plan	Right to "equitable relief" damages
Attorney's Fees	Probably no Attorneys Fees
Preempts state laws	Does not preempt state claims
Requires Add'l notices (Early termination, Unavailability)	Requires Initial & Election Notice only
Does not include elected officials	Covers elected officials, political appointees
Bankruptcy is a Qualifying Event	Bankruptcy is NOT a Qualifying Event

## **COBRA Rights of Public Employees May Arise From Two Different Statutes (*part 2*)**

### **Similarities in the Two Laws**

Both require an Initial Notice of Qualifying Event to be sent.

Both require a Notice of the Right to Elect Coverage to be sent.

Both laws rely on Department Of Labor regulations and notice forms as a best practice or standard of care.

Requirements of Notices are similar or the same: name of plan and contact information; type of qualifying event; the identity of the qualified beneficiaries and when their active coverage will end if COBRA isn't elected; a statement on the various rights that the qualified beneficiaries have to elect coverage; an explanation of the plan's COBRA's procedures for election coverage, including the length of the election period and the date by which the election must be made; an explanation of the consequences of failing to elect or waiving 'COBRA coverage; a description of the COBRA coverage; and premium information such as amounts and due dates.

### **What This Means For Counties**

CHP administers COBRA for all members of the pool, regardless of size and has taken a conservative approach and is in compliance with the requirements.

For those counties who are not participants in CHP, they should check with their healthcare benefits administrator to make sure that the COBRA practices are in compliance with these guidelines.

A county who carries the healthcare benefits administrative responsibilities for their own health benefits plans, should seek a review of their own procedural compliance and take the most conservative approach of complying with COBRA requirements and notices.

For more information contact CTSI at 303-861-0507.