

## How Long Do Employees Have to Elect COBRA Coverage?

### The Problem

COBRA election periods do not automatically end after 60 days. The U.S. Court of Appeals for the 5<sup>th</sup> Circuit (whose jurisdiction includes Texas) recently reiterated that point when it held that the statutory requirements of COBRA only provided a minimum period during which COBRA continuation coverage could be elected. (*Lifecare Hospitals Inc. v. Health Plus of Louisiana Inc.*, 5<sup>th</sup> Cir., No. 04-30422, 7/20/05.)

The court noted that the statute is silent with respect to the maximum length of the election period, suggesting that the parties to a plan subject to COBRA can choose to have an election period of any length, so long as it is at least 60 days. Therefore, if plan documents are silent on the maximum length of the COBRA election period, as was the case in *Lifecare*, or else merely provide that the election period is “at least 60 days,” COBRA continuation coverage could potentially be elected at any time during the applicable COBRA continuation period (18, 29 or 36 months). Furthermore, the court stated that such elections can apply retroactively to the date that regular coverage terminated.

### Employer Action

Plan sponsors should review their plan documents and COBRA notices to determine (a) whether they explicitly limit the COBRA election period to 60 days following the later of (i) the date coverage under the plan terminates due to a COBRA qualifying event, or (ii) the date on which the qualified beneficiary receives the statutorily-required notice of his/her COBRA options, and (b) whether they specify the exact date by which the qualified beneficiary must elect COBRA coverage. Finally, *Lifecare* highlights the importance of timely providing COBRA notices, since the election period will not begin to run until the qualified beneficiary has been notified properly of his/her COBRA election rights.

If you should have any questions regarding COBRA coverage, please contact any of the following members of the Employee Benefits/Executive Compensation Practice Group.

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