

# New Jersey Employment Attorneys Issue COBRA Audit Alert

by Gary S. Young on June 11, 2012

Is your company ready for a COBRA audit? Employers sponsoring group health plans subject to COBRA coverage requirements (companies with 20 or more employees) may be targeted by an Internal Revenue Service COBRA compliance audit. COBRA is the federal law that requires that covered individuals receive an initial notice of rights when they first become eligible to participate in the COBRA-covered group health plan (a common employer omission), and again when a qualifying event occurs, along with the opportunity to elect continuation coverage. These notices must be provided to all qualified beneficiaries within strict time limits.

Under the recently published audit guidelines, the IRS COBRA audit will review the following:

- The employer's COBRA procedure manual (or its equivalent);
- Form letters used in COBRA administration;
- The underlying group health plan documents;
- The employer's internal audit procedures; and
- Identification of, and details of, any COBRA-related litigation involving the employer.

If any of these materials are not available, or are deficient, the examining agent is directed to follow-up with a much more comprehensive review of COBRA procedures from top to bottom. The audit penalty for non-compliance can be an excise tax up to the lesser of \$500,000 or 10% of the employer's total expenditure for the year on group health plans.

To prepare, employers should conduct self-audits by reviewing the audit guidelines against plan documentation and procedures to establish, modify or review COBRA compliance. Such review must include training all personnel responsible for COBRA compliance on those procedures, and to make sure that an experienced New Jersey employment attorney has reviewed all aspects of the COBRA compliance program.