

New Changes to New York Insurance Mandates & the E-Verify Deadline Approaches

With the enactment of two new laws in New York, your clients may be affected by the New York legislature's attempt to expand and extend employer-sponsored group health coverage. You may wish to send information to your clients on these new mandates; therefore we are providing you with the following for that purpose. In addition, we are providing a brief update on the E-Verify obligations that become required for federal contractors as of September 8, 2009.

NY: Dependent Coverage Expanded to Age 29

New York Law (Chapter 240 of the Laws of 2009) now requires health insurers (for policies issued or renewed in New York) and HMOs to allow an employee's unmarried child who lives, resides or works in NY state or the service area of the insurer/HMO to be covered under the employee's insured group health plan through age 29 – without regard to the child's financial dependence or student status. The law requires insurers and HMOs to offer employers an option to purchase coverage that includes young adults as dependents in family policies through age 29. Employers are not required for the coverage for a dependent child through age 29. The law does not apply to self-insured plans and will take effect with the beginning of the plan year (January 1, 2010 for most plans).

Coverage for the dependent will be retroactive if election is made within 60 days of the date that the dependent would otherwise age off a parent's policy. In all other cases, coverage will be prospective and will start no more than 30 days from the date that the insurer receives notice of the dependent's election and premium payment. Once enrolled, coverage may continue until: the dependent terminates coverage; the parent loses eligibility for the group health insurance; the dependent no longer meets the eligibility requirements; premium is not paid in full within the grace period; or, the group insurance policy is terminated.

In order to participate, the "Age 29" law requires the coverage, the young adult's parent, and the young adult to meet certain requirements.

The coverage must:

1. Be a group health insurance policy that includes coverage for dependents;
2. Be issued for delivery in New York State; and
3. Be fully insured (this benefit does not apply to self-insured plans).

The parent must: be eligible for coverage under the group policy as an employee or member of the group.

The young adult must:

1. Be unmarried;
2. Be 29 years of age or under;

3. Not be insured by or eligible for health insurance through his or her own employer;
4. Live, work or reside in New York State or the health insurance company's service area; and
5. Not be covered under Medicare.

The young adult does not have to live with a parent, be financially dependent on a parent, or be a student.

NY "Mini Cobra" Continuation Coverage Expanded from 18 to 36 Months

In addition, New York (Chapter 236 of the Laws of 2009) requires insurers and HMOs to offer COBRA qualified beneficiaries who have exhausted the 18 or 29 months federal COBRA period the opportunity to continue coverage for up to 36 months from the date the beneficiary's coverage started. The law applies to benefits normally provided pursuant to federal COBRA and through the state's "mini-COBRA." Therefore, former employees will be allowed to extend their health insurance from 18 months to 36 months, regardless if they worked for a small employer or large employer. Otherwise, all provisions of COBRA and mini-COBRA still apply; the only difference in that covered employees can continue their health insurance for up to 36 months rather than 18 months. This law became effective July 1, 2009.

What Obligations Do Employers Have under These New York Laws?

Both laws place the impact the insurance companies delivering policies in New York, more than on employers. The laws apply to policies or contracts issued or delivered through the state of New York. To determine whether the laws have an impact on a given employer, its employees, or its group health plan, the employer should look whether its group health plan is issued, written, and delivered in the state of New York.

While there is no specific notice requirement under the continuation law, ERISA requires that the information provided to employees and their dependents is complete, accurate and up-to-date. Employers may need to revise their handbooks, orientation checklists, summary plan descriptions, enrollment forms and COBRA forms. Plans using a third party administrator (TPA) for COBRA, should make sure the TPA will be incorporating the change in their forms and notices to dependents. Employers who act as COBRA administrator may have continuing obligations throughout the 36 months of COBRA coverage, and the COBRA notice should reflect the availability of the 36 months of coverage – though otherwise COBRA notice and election rights remain the same.

If the employer is the plan administrator for their group health plan, we would certainly recommend that the administrator issue notice of these rights – the administrator as a fiduciary has a duty to inform the plan participants about their rights (though there is nothing specific in the language of the new laws indicating this). Employers may want to reach out their carriers to

see if/how the carriers are notifying plan participants and qualified beneficiaries of the age 29 coverage right, and then adopt a similar notice or form.

For more information, see the New York Insurance Department's website, under "Hot Topics" at <http://www.ins.state.ny.us>.

Federal Contractors Must Use E-Verify Starting September 8, 2009

A U.S. District Court in Maryland ruled in favor of the government recently when it found that the Bush Administration's Executive Order regarding use of E-Verify was legal. (*Chamber of Commerce of the United States v. Napolitano*) The Executive Order requires federal contractors to use E-Verify to check the employment eligibility of all newly hired employees, as well as all current employees directly working on a contract.

Because of this ruling, the E-Verify Rule start date is now set for September 8, 2009.

E-Verify is a free and simple to use Web-based system that electronically verifies the employment eligibility of newly hired employees. The confirmed deadline means that most federal contracts awarded, as well as solicitations issued after September 8, 2009, must include a clause mandating use of E-Verify for all employees hired during the contract period and all existing employees assigned to perform work under the contract. Companies awarded a contract with the E-Verify clause on or after Sept. 8 will be required to enroll in E-Verify within 30 days of the contract award date.

Affected federal contracts include prime contracts greater than \$100,000 and subcontracts greater than \$3,000 that flow from those prime contracts. The prime contract will contain a clause confirming the E-Verify requirement.

For existing, indefinite-delivery/indefinite quantity contracts, the federal contracting officer is to prepare an amended contract to include an E-Verify clause. Exceptions to the E-Verify requirement are federal prime contracts with performance terms of less than 120 days, contracts of less than the \$100,000 threshold, contracts where all the work is performed outside of the U.S., and contracts for commercially available off-the-shelf (COTS) items.

Covered companies have 30 days from the date of contract award to enroll and 90 days from the enrollment date to initiate verification queries for existing employees who will be working on the contract and to begin using the system to verify newly hired employees. After this 90-day phase-in period, the employer will be required to initiate verification of each newly hired employee within 3 business days after their start date.

To meet this three-day requirement, employers may initiate verification of a newly hired employee before their start date if the employee has accepted the job offer and filled out the Form I-9. Please note that pre-screening of job applicants is not allowed; the system may be used for new hires only after the employee has been offered the job and has accepted. Please also remember that an employer must continue to use E-Verify for the life of the contract for all

new hires, whether or not they are employees assigned to the contract, unless certain exceptions apply.

According to USCIS, more than 145,000 participating employers at nearly 550,000 worksites nationwide currently use E-Verify to electronically verify their workers' employment eligibility. Since Oct. 1, 2008, more than 7.6 million employment verification queries have been run through the system and approximately 97 percent of all queries are now automatically confirmed as work-authorized within 24 hours or less.

You can access more information on E-Verify though the government website:
<http://www.uscis.gov>.