

# Benefit Beat



Author: Karen R. McLeese, Esq.

## In This Edition:

❖ **FIDUCIARIES BE DILIGENT,  
SAYS SUPREME COURT**

❖ **DOL EXTENDS COMMENT  
PERIOD FOR FIDUCIARY RULES**

❖ **BE THOROUGH WITH COBRA  
COMMUNICATIONS**

❖ **REVISED FMLA MODEL  
FORMS...AGAIN**

## FIDUCIARIES BE DILIGENT, SAYS SUPREME COURT

In a recent Supreme Court case (*Tibble v. Edison International*, 2015 WL 2340845 (U.S. 2015)), several important issues are at stake. Of particular note, the Supreme Court underscores, without further defining, the on-going duty of a qualified plan fiduciary to monitor plan investments. Specifically, a qualified plan must be administered prudently and for the exclusive benefit of plan participants. There is a duty to select investments prudently, and according to the Supreme Court, there is an additional and distinct duty to monitor those investments. The Supreme Court is returning the case to the Ninth Circuit Court to discern whether, in fact, this duty was accomplished.

This opinion, affirming on-going fiduciary duties, effectively extends ERISA's six-year statute of limitations, applicable to claims of a breach of fiduciary duty. Thus, the statute of limitation continues as long as the challenged behavior continues.

## DOL EXTENDS COMMENT PERIOD FOR FIDUCIARY RULES

As follow-up to last month's *Benefit Beat* article relating to the proposed fiduciary rules (see *DOL Proposes Fiduciary Standards*), the comment period for these proposed rules is scheduled to close on July 6, 2015. The DOL recently announced an extension of the comment period to July 21, 2015. In addition, the DOL plans to hold a public hearing during the week of August 10<sup>th</sup>, which will be followed by an additional open comment period.

CBIZ BENEFITS &  
INSURANCE SERVICES, INC.



## BE THOROUGH WITH COBRA COMMUNICATIONS

It is very important, according to the U. S. District Court for the Middle District of Alabama, for COBRA election material not only be provided, but that it be legally sufficient, meaning that it provide all of relevant information. In the matter of *Griffin v. Neptune Tech. Grp* (2015 WL 1635939 (M.D. Ala. 2015)), a terminated employee who was eligible for COBRA continuation coverage under his employer's group health plan received a COBRA notice from his employer following his termination of employment. The Court found that while the employer made a good faith effort to notify the individual of his COBRA rights, "the contents of the notice were insufficient under the law to allow him to make an informed and intelligent decision whether to elect continued coverage". Specifically, the Court found that the contents of the COBRA election notice lacked pertinent information required under the Department of Labor's regulations relating to the contents of the notice, as well as failed to adequately explain the plan's procedures for electing COBRA coverage.

This is a good reminder for plan administrators to make certain that all plan communications are accurate and thorough. This includes not only COBRA information, but summary plan descriptions, summaries of material modifications, and any other plan communications.

## REVISED FMLA MODEL FORMS...AGAIN

Earlier this year, the Department of Labor's Wage and Hour Division changed the expiration dates of several model FMLA forms over the course of several months, without changing any text contained in the forms.

A few weeks ago, the DOL released another set of forms, this time with new expiration date of May 31, 2018.

In addition to the date change, the text of four forms used to certify serious injury or illness have been modified. Specifically, the revised

forms reiterate the need for employers to keep medical information collected for FMLA purposes confidential and separate from their usual personnel records, in accordance with the confidentiality provisions of the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA). Following are the modified FMLA forms:

- ♦ WH-380-E *Certification of Health Care Provider for Employee's Serious Health Condition*
- ♦ WH-380-F *Certification of Health Care Provider for Family Member's Serious Health Condition*
- ♦ WH-385 *Certification for Serious Injury or Illness of Current Servicemember — for Military Family Leave*
- ♦ WH-385-V *Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave*

The following forms have updated expiration dates of May 31, 2018 but do not include any text changes to the model language contained in the forms:

- ♦ WH-381 *Notice of Eligibility and Rights & Responsibilities*
- ♦ WH-382 *Designation Notice*
- ♦ WH-384 *Certification of Qualifying Exigency For Military Family Leave*

**ABOUT THE AUTHOR:** Karen R. McLeese is Vice President of Employee Benefit Regulatory Affairs for CBIZ Benefits & Insurance Services, Inc., a division of CBIZ, Inc. She serves as in-house counsel, with particular emphasis on monitoring and interpreting state and federal employee benefits law. Ms. McLeese is based in the CBIZ Kansas City office.

*The information contained in this Benefit Beat is not intended to be legal, accounting, or other professional advice, nor are these comments directed to specific situations. This information is provided as general guidance and may be affected by changes in law or regulation. This information is not intended to replace or substitute for accounting or other professional advice. You must consult your own attorney or tax advisor for assistance in specific situations. This information is provided as-is, with no warranties of any kind. CBIZ shall not be liable for any damages whatsoever in connection with its use and assumes no obligation to inform the reader of any changes in laws or other factors that could affect the information contained herein.*