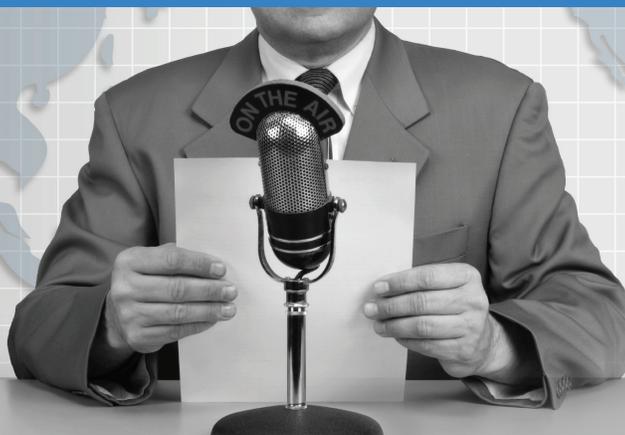


Employee Benefits Broadcast



Foley is pleased to provide you with a brief summary of the January 26, 2010 installment of the Employee Benefits Broadcast Web conference series.

In **Headline News**, Partner Samuel F. Hoffman discussed the extension of the federal COBRA continuation coverage premium subsidy. Highlights included:

- The original COBRA premium subsidy allowed assistance-eligible individuals to pay only 35 percent of their COBRA continuation coverage premium
- Originally, the premium subsidy covered assistance-eligible individuals who became eligible between September 1, 2008 and December 31, 2009; the extension now covers individuals who become eligible through February 28, 2010
- The premium-subsidy extension extends the maximum coverage period for assistance-eligible individuals from nine months to 15 months
- Employers must provide new notices to both existing and new COBRA qualifying individuals informing them of the premium-subsidy extension
- The premium subsidy will continue to be collected through the employer's Form 941

In **Cram Session**, Partner Leigh C. Riley discussed the Health Information Technology for Economic and Clinical Health (HITECH) Act, which made changes to some of HIPAA's privacy requirements. The key points were:

- If a breach of unsecured protected health information occurs, the health plan must now provide notice of the breach
- If a breach occurs, the health plan must contact all affected individuals, the U.S. Department of Health and Human Services, and, in some cases, local media outlets
- To meet the "minimum necessary" rule when disclosing protected health information, the health plan should only disclose a limited data set to the extent possible
- Business associates are now directly subject to certain HIPAA provisions and penalties
- Plan sponsors should amend their business associate agreements to reflect the changes made by the HITECH Act
- Penalties have increased significantly for HIPAA violations, and enforcement also is expected to increase

For **In the Spotlight**, Partner Michael H. Woolever discussed the IRS 409A document-failure correction program as set forth in IRS Notice 2010-6. The main points were:

- There are typically no 409A penalties where correction does not affect operation of the plan within one year of the date of correction

Employee Benefits Broadcast



- Use of ambiguous terms is not a document failure unless a pattern of abuse exists
- A document failure only impacts the specific plan with the defect (that is, no plan aggregation)
- Corrections made in 2010 are retroactive to January 1, 2009
- New plans must be amended promptly to avoid penalties
- Plan sponsors should review nonqualified deferred compensation plans to ensure compliance and take advantage of correction program if violations are found

Author

Andrew D. Gregor

Associate

San Diego, California

agregor@foley.com

About the Employee Benefits Broadcast

The Employee Benefits Broadcast provides participants with needed information in the most efficient manner possible — only a telephone line and Internet access are required to participate — allowing employee benefits professionals to stay up-to-date with timely information from anywhere in the nation.

For more information, please visit Foley.com/EBB or contact Elie Harris at eharris@foley.com.

