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COBRA Subsidy Notices

The Department of Labor (DOL) published new COBRA Model Notices on March 19, 2009, which provide information about the COBRA premium subsidy and the additional election period. The new model notices are available from the DOL at <http://www.dol.gov/ebsa/COBRAModelNotice.html>.

The American Economic Recovery and Reinvestment Plan of 2009 (commonly referred to as a Stimulus Plan) was signed into law on February 17, 2009. The Plan imposes two new COBRA compliance obligations on employers who provide COBRA coverage: 1) a COBRA premium subsidy and 2) a "second chance" COBRA election period. This new law applies to all public and private health insurance plans currently subject to COBRA and the requirements are generally effective for COBRA premiums charged on or after March 1, 2009.

The subsidy for COBRA premiums is available for "Assistance Eligible Individuals" (AEIs). An AEI is any employee or dependent who loses coverage under a group health insurance plan as a result of an "involuntary termination" of employment between September 1, 2008 and December 31, 2009. An AEI is eligible for the COBRA Subsidy if the individual is otherwise entitled to COBRA and is not eligible for either Medicare or other group coverage.

The COBRA Subsidy allows AEIs who pay 35% of their COBRA premiums to be treated as if they paid the full amount of the health insurance premium. The remaining 65% of the AEI's health insurance premium is funded through a Federal payroll tax credit available to employers. It is important to note the Subsidy is only applicable for the amounts actually paid by the AEI or paid on behalf of the AEI by someone other than the employer. For example, if an employer pays 100% of a former employee's health insurance premium, the employer cannot claim any COBRA Subsidy credit for the amount paid on the employee's behalf.

The new COBRA Subsidy applies only to premiums for health insurance coverage beginning on or after March 1, 2009. The COBRA Subsidy is available for up to nine months, but will end earlier if the AEI becomes eligible for other group coverage, Medicare, or when the AEI's maximum COBRA period expires.

The DOL has published four new model notices: 1) General Notice (Full Version), 2) General Notice (Abbreviated Version), 3) Alternative Notice, and 4) Notice in Connection with Extended Election Period. These notices replace all prior DOL COBRA Notices.

The General Notice (Full Version) should be to all qualified beneficiaries, not just covered employees, who experienced a qualifying event at any time from September 1, 2008 through December 31,

2009, September 1, 2008 through December 31, 2009, regardless of the type of qualifying event.

The General Notice (Abbreviated Version) includes the same information as the full version regarding the availability of the premium reduction and other rights under ARRA, but does not include the COBRA coverage election information. It may be sent in lieu of the full version to individuals who experienced a qualifying event on or after September 1, 2008, who have already elected and still have COBRA coverage.

The Alternative Notice is designed to be used by employers and insurers who have less than 20 employees (and, therefore, are not covered by COBRA) but are obligated to provide continuation coverage under a State law. Continuation coverage requirements vary among States, and this model notice should be modified as necessary to conform to the applicable State law.

Notice in Connection with Extended Election Periods must be sent by employers subject to COBRA provisions to any assistance eligible individual (or any individual who would be an assistance eligible individual if a COBRA continuation election were in effect) who: 1) Had a qualifying event at any time from September 1, 2008 through February 16, 2009; and 2) Either did not elect COBRA continuation coverage, or who elected it but subsequently discontinued COBRA. This notice includes information on ARRA's additional election opportunity, as well as premium reduction information. This notice must be provided by April 18, 2009. (April 18, 2009, is a Saturday, so, for most employers, the notice should be sent out by April 17, 2009.)

Unfortunately, the DOL still has not provided guidance defining exactly what constitutes an "involuntary termination." The House Ways and Means Committee FAQ states "Involuntary termination is a termination that is at the direction of the employer." Employers will want to proceed cautiously, since the subsidy credit will only be provided for former employees who meet the AEI criteria.

Public Sector employers should also be aware the model COBRA notices will need to be modified to reference the Department of Health and Human Services, which handles questions relating to state and local government workers, rather than the DOL.

This article should not be construed as legal advice and is intended for general informational purposes only. If you have any questions regarding this article, you should consult your legal counsel.

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