

U.S. DEPARTMENT OF LABOR ISSUES NEW MODEL COBRA NOTICES

Stimulus Bill Requires New COBRA Notice Obligations

by Marta M. Fernandez, 3/23/09

On March 19, 2009, the U.S. Department of Labor published model notices to help plans and employers comply with new requirements for notifying terminated employees of their right to receive health care premium subsidies for COBRA payments under the American Recovery and Reinvestment Act of 2009 (ARRA). To view the U.S. Department of Labor's Model Notices, [click here](#).

NEW EMPLOYER OBLIGATIONS

Two new COBRA notice requirements have been imposed on employers:

1. COBRA notices now must include information on the premium subsidy program.
2. Employers must notify all COBRA-qualified individuals of the new subsidy program by April 17, 2009 (60 days after the Stimulus Bill was enacted). **This includes any beneficiary who has become COBRA eligible since September 1, 2008.** The notice must also be made to the qualified dependents of these individuals.

Employers will need to set up a system that captures premium subsidies through payroll tax offsets.

BACKGROUND

The American Recovery and Reinvestment Act (ARRA), commonly referred to as the Stimulus

Bill, includes provisions that subsidize health care premiums under the Consolidated Omnibus Budget Reconciliation Act (COBRA) for employees who are involuntarily terminated. The subsidy took affect March 1, 2009.

For a full explanation of the COBRA premium reduction program, [click here](#).

WHICH EMPLOYEES QUALIFY

Employees who are terminated between September 1, 2008 and December 31, 2009 and with annual incomes less than \$125,000 (or less than \$250,000 for couples) are eligible to receive the COBRA premium subsidy. Individuals who qualify for the subsidy but decline COBRA coverage, are given an additional 60 days after receiving notice of the election period to elect to take advantage of the subsidy.

HOW IT WORKS

Qualified employees are eligible for a 65 percent subsidy toward their health care premium, under COBRA, for up to nine months. (The subsidy terminates sooner if the individual receives any offer of new health care coverage through an employer, or if the individual becomes eligible for Medicare.) The subsidy does not apply to health flexible spending accounts. The United States Treasury Department will provide employers (or the health plan that administers the COBRA benefits) a credit against payroll taxes to cover the subsidized cost.

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ALTERNATIVE COVERAGE

Employers may elect to provide alternative coverage, but it is not required. The coverage must be less than or equal to the cost of the COBRA premium currently available to the qualified individual and must also be made available to the employer's active employees. Certain other requirements for "alternative coverage" apply.

HOW WE CAN HELP

Current law does not define "involuntary termination" and JMBM's Labor and Employment lawyers can provide counsel as to which terminations qualify for the COBRA subsidy.

We can review your COBRA notices to ensure they comply with requirements.

COBRA is only one area affected by employee terminations. We can review and update your termination procedures to cover the broad range

of issues that affect employers when terminating employees.

JMBM's Labor & Employment lawyers are experienced in navigating the minefield of issues surrounding mass layoffs, including those that take place in a union environment. If your company is facing this scenario, we can guide you every step of the way.

Please call on us. We know we can help.



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