



# Updates

## Employee Benefits

### DOL Issues New Model COBRA Notices

March 2009

Yesterday the DOL issued new model COBRA notices that employers can use to inform employees of COBRA changes brought about by the enactment of the 2009 American Recovery and Reinvestment Act (ARRA), on February 17, 2009. ARRA provides certain individuals with a COBRA premium reduction and includes a special opportunity for COBRA election. Employers must notify employees of the special COBRA election opportunity by **April 18, 2009**.

#### **COBRA Subsidy**

Under ARRA, individuals involuntarily terminated between September 1, 2008 and December 31, 2009 are only required to pay 35% of the regular COBRA premium, for a period of up to nine months. The remaining 65% of the COBRA premium will be subsidized by the Federal government through payroll tax reimbursement.

The subsidy is available for periods of health care coverage beginning on or after February 17, 2009. Therefore, for health plans that provide coverage on a monthly basis, the new subsidized premium reduction became effective on March 1, 2009. If individuals

who are eligible for the subsidy pay full premiums for any periods beginning on or after February 17, 2009, the individual must be reimbursed the 65% or given a credit against future payments. The subsidy is phased out for individuals with incomes of \$125,000 or higher.

More information on this subsidy is available at <http://www.dol.gov/ebsa/pdf/fsCOBRAPremiumReduction.pdf>.

#### **Reimbursement of 65% Subsidy**

An employer, plan or insurer is reimbursed for the premium subsidy by a credit against payroll taxes. The party entitled to reimbursement is the party to whom COBRA premiums are payable - generally, the insurer for a fully insured health plan, or the employer in the case of a self-insured or partially self-insured health plan.

IRS Form 941 has been revised to allow for the reimbursement claim. The reimbursement may either be claimed as an offset against payroll taxes on Line 12a or refunded as an overpayment at the end of the quarter. The number of individuals provided the COBRA premium

assistance must be reported on Line 12b. The due date for the first quarter 2009 Form 941 was not extended. Further instructions and information on the revised form 941 may be found on the IRS Website at

<http://www.irs.us-treas.gov/newsroom/article/0,,id=204708,00.html> and <http://www.irs.ustreas.gov/pub/irs-pdf/f941.pdf>.

#### **Special COBRA Election Opportunity**

ARRA also provides a one time modification to the election period for COBRA. Former employees who were involuntarily terminated on or after September 1, 2008 but who did not elect COBRA when it was first offered OR who did elect COBRA, but are no longer eligible, have an additional chance to elect COBRA coverage. Employers must notify such former employees by April 18, 2009 of the right to specially elect the new COBRA coverage. The former employees have 60 days from receipt of notice to consider the subsidized coverage. Coverage for such individuals begins with the first period of coverage

continued



beginning on or after February 17, 2009. The IRS has posted guidance related to this and other new changes to the COBRA rules on its website at <http://www.irs.gov/newsroom/article/0,,id=204708,00.html>.

### **Notice Requirements:**

Under ARRA, employers are obligated to inform individuals with a qualifying event during the period from September 1, 2008 to December 31, 2009 of the new COBRA rules. The DOL has provided three model notices to assist employers with these new COBRA notification obligations. The new model notices are:

#### *New Modified General Notice*

The DOL has modified its General COBRA Continuation Election Notice to incorporate information regarding the COBRA subsidy under ARRA. This notice may be used to inform all individuals who experience a qualifying event for the remainder of 2009 of their COBRA election rights. It also may be used to notify former employees and qualified beneficiaries who experienced a qualifying event on or after September 1, 2008 of the premium reduction.

#### *Abbreviated Version of General Notice*

This abbreviated notice provides information regarding

the COBRA subsidy and other rights under ARRA. It does not provide the general COBRA coverage election information. It may be used to notify former employees and qualified beneficiaries who experienced a qualifying event on or after September 1, 2008 of the premium reduction.

#### *Notice of Special COBRA Election Period*

This notice provides information on the extended COBRA election period described above. It may be used to notify individuals who had a qualifying event on or after September 1, 2008 but did not elect COBRA coverage (or elected it but subsequently terminated it) of their new opportunity to elect COBRA. A notice regarding this opportunity must be provided by April 18, 2009.

The model notices are posted at <http://www.dol.gov/ebsa/COBRAmodeNotice.html>.

### **Please Act Now:**

To fulfill the new COBRA obligations under ARRA, an employer should:

- Notify eligible employees of the amended COBRA provisions.
- Alter administrative procedures and policies to allow for:
  - reduced COBRA payment by eligible

employees for nine months;

- payment of the remaining COBRA balance by the employer, if necessary;
  - employer reimbursement, if applicable; and
  - reimbursement (or credit towards future payments) for employees who paid more than the reduced premium
- Amend health plans or summary plan descriptions as necessary to comply with the new rules.

If you have any questions about the new COBRA premiums, how to notify your terminated employees of the changes to the COBRA laws, or need assistance with drafting or reviewing your COBRA Notices, please contact one of the attorneys in the Employee Benefits or Employment and Discrimination Practice Groups listed below:

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