

EMPLOYEE BENEFITS UPDATE

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Department of Labor Issues Model COBRA Notices with Premium Reduction Information

On March 6, 2009, Snell & Wilmer published an *Employee Benefits Update* explaining the new COBRA premium reduction. As explained in that Update, group health plans subject to the COBRA continuation provisions are subject to the premium reduction provisions, notice requirements, and an additional election period under the American Recovery and Reinvestment Act of 2009 ("ARRA").

The COBRA continuation coverage provisions do not apply to group health plans sponsored by employers with fewer than 20 employees. Many states require health insurance issuers who provide group health insurance coverage to plans not subject to the COBRA continuation provisions to provide comparable continuation coverage. Such continuation coverage provided pursuant to state law is also subject to ARRA's premium reduction provisions and notice requirements, but not the additional election period.

On March 19, 2009, the Department of Labor (the "Department") issued four model notices. The Department

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has made the model notices available in modifiable, electronic form on its website. The notices may be accessed by visiting the following web address: <http://www.dol.gov/ebsa/COBRAmodelnotice.html>.

As highlighted below, Assistance Eligible Individuals must be sent an appropriate notice **by April 18, 2009**. In general, an "Assistance Eligible Individual" is an individual who is eligible for COBRA continuation coverage as a result of an involuntary termination of employment at any time from September 1, 2008, through December 31, 2009, and who elects COBRA coverage when first offered or during the second election period. The deadline for sending the other notices is less clear, but notices should be sent as soon as administratively possible.

Description of the Model Notices

ARRA mandates the provision of three notices – a "General Notice," an "Alternative Notice," and a "Notice in Connection with Extended Election Periods." Each of these notices must include:

- A prominent description of the availability of the premium reduction, including any conditions on the entitlement;
- A model form to request treatment as an "Assistance Eligible Individual;"

- The name, address, and telephone number of the plan administrator (and any other person with information about the premium reduction);
- A description of the obligation of individuals paying reduced premiums who become eligible for other coverage to notify the plan; and
- A description of the opportunity to switch coverage options, if applicable.

The Notice in Connection with Extended Election Periods must also include a description of the extended election period.

The Department created these model notices to cover an array of situations in order to deal with the complexity of the various scenarios facing dislocated workers and their families. In an effort to ensure that the notices include all of the information required under ARRA while minimizing the burden imposed on group health plans and issuers, the Department created several packages. Each package is designed for a particular group of qualified beneficiaries and contains all of the information needed to satisfy the content requirements for ARRA's notice provisions. The packages include the following disclosures:

- A summary of ARRA's premium reduction provisions;
- A form to request the premium reduction;
- A form for plans (or issuers) who permit qualified beneficiaries to switch coverage options to use to satisfy ARRA's requirement to give notice of this option;
- A form for an individual to use to satisfy ARRA's requirement to notify the plan (or issuer) that the individual is eligible for other group health plan coverage or Medicare; and
- COBRA election forms and information, as appropriate.

General Notice (Two Versions)

The General Notice is required to be sent by plans that are subject to the COBRA continuation provisions under federal law. It must include the information described above and be provided to ALL qualified beneficiaries, not just covered employees, who have experienced a qualifying event at any time from September 1, 2008, through December 31, 2009, regardless of the type of qualifying event. The Department has created two versions of this notice—an abbreviated version and a full version.

The abbreviated version is for individuals who have elected COBRA and still have COBRA coverage after experiencing a

qualifying event at some time on or after September 1, 2008, to advise them of the availability of the premium reduction and other rights and obligations under ARRA. This notice should be sent to Assistance Eligible Individuals **on or before April 18, 2009**, and should be sent to all other individuals as soon as administratively possible.

The full version is for individuals who have not yet been provided a COBRA election notice or were provided an election notice that did not include the premium reduction information. The full version includes all of the information related to the premium reduction and other rights and obligations under ARRA, as well as all of the information required in an election notice pursuant to the Department's final COBRA notice regulations. Providing the longer notice to individuals who have experienced a qualifying event from September 1, 2008, through December 31, 2009, will satisfy the Department's existing requirements for the content of the COBRA election notice as well as those imposed by ARRA.

Alternative Notice

The Alternative Notice is required to be sent by issuers that offer group health insurance coverage that is subject to continuation coverage requirements imposed by state law. The Alternative Notice must include the information described above

and be provided to ALL qualified beneficiaries, not just covered employees, who have experienced a qualifying event at any time from September 1, 2008, through December 31, 2009, regardless of the type of qualifying event. Continuation coverage requirements vary among states. Accordingly, the Department crafted a single version of this notice that should be modified to reflect the requirements of the applicable state law. Issuers of group health insurance coverage subject to this notice requirement should feel free to use the model Alternative Notice or the abbreviated model General Notice (as appropriate).

Notice in Connection with Extended Election Periods

The Notice in Connection with Extended Election Periods is required to be sent by plans that are subject to COBRA continuation provisions under federal law. It must include the information described above and be provided to Assistance Eligible Individuals (or any individual who would be an Assistance Eligible Individual if a COBRA continuation coverage 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 but subsequently discontinued COBRA. This notice

MUST be provided to Assistance Eligible Individuals **by April 18, 2009**.

Technically, the Notice in Connection with Extended Election Periods must only be provided to Assistance Eligible Individuals (or any individual who would be an Assistance Eligible Individual if a COBRA continuation coverage election were in effect). However, this notice also works well for other qualified beneficiaries (*i.e.*, those who lost coverage for any reason other than involuntary termination of employment) who previously received a COBRA election notice that did not include the premium reduction information. It is probably less confusing for such individuals to receive this notice than the General Notice (full version). Furthermore, by providing this notice to all qualified beneficiaries who had a qualifying event at any time from September 1, 2008, to February 16, 2009, plan administrators will reduce the risk of failing to send the notice to an Assistance Eligible Individual.

Additional Information

For additional information about ARRA's COBRA premium reduction provisions, contact the Department's Employee Benefits Security Administration's Benefits Advisors at 1.866.444.3272. In addition, the Employee Benefits Security Administration has developed a dedicated COBRA web page (<http://www.dol.gov/COBRA>) that will

contain information on the program as it is developed. Subscribe to this page to get up-to-date fact sheets, FAQs, model notices, and applications.

The Internal Revenue Service is expected to issue more guidance about involuntary terminations of employment. Presumably, the IRS will post such guidance on its web page. Information about the COBRA premium reduction can be found at: <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>.

Conclusion

Group health plans will need to quickly update their COBRA notices and determine which qualified beneficiaries are entitled to which notice packet. If you have questions about this article, please call Denise Atwood at 602.382.6297, Nancy Campbell at 602.382.6374, or Megan Thiel at 602.382.6523.

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