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## Update on COBRA Premium Assistance – Model Notices Available

On March 19, 2009, the Department of Labor ("DOL") released model notices for use by employers to notify certain individuals of the COBRA premium assistance now available under the American Recovery and Reinvestment Act of 2009 ("Act"). The Act provides a 65% federal subsidy for COBRA continuation premiums for up to 9 months for "assistance eligible individuals." Workers and their family members who fit this definition and elect COBRA coverage will only be required to pay 35% of the applicable COBRA premium in order to receive COBRA continuation coverage from an employer's group health plan. An assistance eligible individual is a COBRA qualified beneficiary who meets the following requirements:

- Is eligible for COBRA continuation coverage at any time during the period from September 1, 2008 through December 31, 2009;
- Elects COBRA coverage (when first offered or during the additional election period provided by the Act); and
- The COBRA election opportunity relates to an involuntary termination of employment that occurred at some time from September 1, 2008 through December 31, 2009.<sup>1</sup>

However, if the individual is eligible for other group health coverage (such as through a new employer's plan or a spouse's plan) or Medicare, then that person is not eligible for the COBRA premium assistance.

### DOL Model Notices

The Act imposes several administrative requirements on employers, one of which is the mandate for employers to provide notification of the COBRA premium assistance. In addition to providing the notice prospectively to all individuals that experience a COBRA qualifying event, employers are required to provide this new COBRA notice to any individual who had a COBRA qualifying event that occurred from September 1, 2008 through February 16, 2009, even if they previously declined to elect COBRA coverage, or if they elected COBRA coverage and later discontinued it. *This notice must be provided by April 18, 2009. Failure to do so will be deemed to be a violation of COBRA.*

<sup>1</sup> To date the DOL has not provided additional guidance regarding what constitutes an involuntary termination of employment.

The DOL has issued four (4) different model notices that are available at <http://www.dol.gov/ebsa/COBRAModelNotice.html>. Employers may utilize the model notice that applies to the particular facts and circumstances of the qualified beneficiary; however, employers should complete the model notice(s), and, where appropriate, update and revise the applicable model notice(s) to be consistent with the terms and procedures of their group health plan (as amended for the Act). A brief explanation of each model notice is provided below:

1. General Notice (Full version). Plans subject to the COBRA provisions must send the General Notice to all qualified beneficiaries, not just assistance eligible individuals, who experienced a qualifying event at any time from September 1, 2008 through December 31, 2009, regardless of the type of qualifying event, AND who either have not yet been provided an election notice or who were provided an election notice on or after February 17, 2009 that did not include the additional information required by the Act. This full version includes information on the premium reduction as well as information required in a COBRA election notice.
2. General Notice (Abbreviated version). The abbreviated version of the General Notice includes the same information as the full version regarding the availability of the premium reduction and other rights under the Act, but does not include the COBRA coverage election information. It may be sent in lieu of the full version to qualified beneficiaries who experienced a qualifying event on or after September 1, 2008, have already elected COBRA coverage, and still have it.
3. Alternative Notice. Insurance issuers that provide group health insurance coverage must send the Alternative Notice to persons who became eligible for continuation coverage under a State law. Continuation coverage requirements vary among States, and issuers should modify this model notice as necessary to conform it to the applicable State law. Issuers may also find the model Alternative Notice or the abbreviated model General Notice appropriate for use in certain situations.
4. Notice in Connection with Extended Election Periods. Plans subject to the COBRA provisions must send the Notice in Connection with Extended Election Periods to any assistance eligible individual (or any individual who would be an assistance eligible individual if a COBRA continuation election were in effect) who:
  - a. Had a qualifying event at any time from September 1, 2008 through February 16, 2009; and

- b. Either did not elect COBRA continuation coverage, or who elected it but subsequently discontinued COBRA.

This notice includes information on the Act's additional election opportunity, as well as premium assistance information. *This notice must be provided by April 18, 2009.*

Each of these model notices contain several new required disclosures (as applicable) related to the COBRA premium assistance, including:

- The forms necessary for establishing eligibility for the premium assistance;
- Contact information for the plan administrator;
- A description of the extended election period for those who previously declined COBRA continuation coverage;
- A description of the obligation of the qualified beneficiary to notify the plan if he or she becomes eligible for subsequent coverage under another group health plan or Medicare and the penalty for the failure to do so;
- A prominent description of the qualified beneficiary's right to the premium assistance and any conditions on entitlement to such right; and
- A description of the option to enroll in different coverage under the health plan, if applicable.

### **Next Steps for Employers**

Employers must update their COBRA notices to include information about the COBRA premium assistance and new enrollment rights, consistent with the model notices from the DOL, and issue a new COBRA notice to all individuals who had a COBRA qualifying event that occurred on or after September 1, 2008.

Should you have any questions regarding the COBRA premium assistance, please do not hesitate to contact your regular Hall Render attorney or:

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