



Legal Alert: DOL Issues Guidance Regarding Procedure for Appealing Denial of COBRA Subsidy

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On May 21, 2009, the Department of Labor (DOL) issued guidance detailing the procedures applicants for COBRA premium assistance, available under the American Recovery and Reinvestment Act of 2009 (ARRA), may use to appeal a denial of their eligibility for the premium subsidy.

The ARRA, enacted on February 17, 2009, provided COBRA premium assistance for certain assistance-eligible individuals that were involuntarily terminated between September 1, 2008 and December 31, 2009. The Act also provided an expedited appeals process, through which applicants that are denied COBRA premium assistance may request a review of their case. The Act did not initially, however, provide any instructions on how the appeals would be processed, or the agency that would handle these appeals.

The DOL's full guidance about the appeals process can be found at <http://www.dol.gov/ebsa/COBRA/main.html>. According to the guidance, the DOL's Employee Benefits Security Administration ("EBSA") will process appeals submitted by former employees of private employers, including non-profit employers subject to federal COBRA rules. Similarly, the U.S. Department of Health and Human Services will process appeals submitted by former employees of Federal, State or local governments, or former employees afforded continuation coverage under State insurance laws.

We previously distributed legal alerts discussing how the ARRA impacts COBRA coverage, the means by which employers, where applicable, may claim the tax credit for COBRA subsidies paid under the Act, and the DOL model notices that must be sent to all Assistance Eligible Individuals. You can access these legal alerts via the following links:

<http://www.fordharrison.com/shownews.aspx?show=4526>,
<http://www.fordharrison.com/shownews.aspx?show=4558>, and
<http://www.fordharrison.com/shownews.aspx?Show=4628>.

The Bottom Line:

Employees now have additional information about the procedures they should use to request a review of their case if they are initially denied COBRA premium assistance under the ARRA. Employers and Plan Administrators should keep this information close at hand in the coming months, as the DOL expects greater numbers of former employees to seek this information from these sources.

Should you have any questions, please contact the author of this Legal Alert, Lindsay O'Brien, lobrien@fordharrison.com, 904-357-2005, or any attorney in Ford & Harrison's Employee Benefits Practice Group.