



Legal Alert: DOL Publishes Model COBRA Notices, Other Compliance Resources

1/14/2010

As we previously published in our December 21, 2009 Legal Alert, on December 19, President Obama signed into law the Department of Defense Appropriations Act of 2010 (the "2010 DOD Act") extending the 65% COBRA subsidy that had been previously enacted under the American Recovery and Reinvestment Act of 2009 (the "ARRA"). Under the ARRA, eligibility for the 9-month subsidy was scheduled to end December 31, 2009. The 2010 DOD Act made several important modifications to the ARRA, including: (1) extending eligibility for the subsidy to individuals who are terminated through February 28, 2010 ("assistance eligible individuals" or "AEI"s); (2) lengthening the maximum duration of the subsidy from 9 to 15 months; and (3) adding new notification requirements. The 2010 DOD Act also clarified that eligibility for the subsidy depends upon termination date – not the date on which the AEI would otherwise be eligible for COBRA coverage.

On January 13, 2010, the Department of Labor's website reflected model notices to help employers and plan administrators comply with the 2010 DOD Act's new notification requirements. The model notices may be found on the DOL's website at <http://www.dol.gov/ebsa/COBRAModelnotice.html>. There are three updated model notices.

First, plans must provide an updated General Notice to all qualified beneficiaries – not just AEIs – who experience a qualifying event at any time through February 28, 2010. The model notice includes updated information on the premium reduction as well as information required in a COBRA election notice.

The updated General Notice must be provided to those who have not yet been given an election notice, **regardless of the type of qualifying event**. (Individuals who experience an involuntary termination of employment after December 19, 2009 (the date of the 2010 DOD Act) must receive the updated General Notice within the normal COBRA notice deadlines.)

Second, there is a Premium Assistance Extension Notice that must be provided in several situations. Individuals who were AEIs on October 31, 2009 and are still receiving the subsidy under the ARRA (*i.e.*, have not exhausted 9 months of premium reduction assistance), and individuals who experienced a termination of employment after October 31, 2009 and lost their health coverage, must be provided a Premium Assistance Extension Notice (unless they were already provided a timely updated General Notice). In addition, AEIs who began receiving the premium subsidy on March 1, 2009

but exhausted it after 9 months and then dropped COBRA coverage must be notified that they may be eligible to retroactively elect COBRA and pay reduced premiums for retroactive coverage; to do so, however, they must pay 35% of their premium costs within 30 days after the Premium Assistance Extension Notice is provided. Finally, individuals who began receiving the premium subsidy on March 1, 2009, exhausted it after 9 months, but continued unsubsidized COBRA coverage must be provided the Premium Assistance Extension Notice within the first 60 days following the end of their 9 months of subsidized coverage (the period following expiration of the 9-month subsidy but during which the individual continues to be an AEI under the 2010 DOD Act is referred to as the "transition period").

Third, there is a model updated Alternative Notice that insurance issuers who provide group health insurance coverage must send to those persons who became eligible for continuation coverage under state law. Continuation coverage requirements vary among states and issuers should modify this model Alternative Notice as necessary. Issuers may also find the model Premium Assistance Extension Notice or the updated model General Notice appropriate for use in certain situations.

The DOL's Employee Benefits Security Administration has also released a Fact Sheet (available at <http://www.dol.gov/ebsa/newsroom/fscobrapremiumreduction.html>) and some initial Official Guidance that summarizes the provisions of the 2010 DOD Act. The Official Guidance (<http://www.dol.gov/ebsa/faqs/faq-cobra-premiumreductionEE.html>), consisting of 15 questions and answers, provides answers to many of the commonly asked questions about the subsidy extension.

The Bottom Line:

Employers should act quickly to take the following next steps:

- Identify all qualified beneficiaries who experienced a qualifying event at any time from September 1, 2008 through February 28, 2010 regardless of the type of qualifying event. Determine if those persons have been provided a COBRA election notice and a general notice about the subsidy.
- Identify those individuals who must be provided a Premium Assistance Extension Notice, including individuals who are entitled to notice of their right to elect COBRA retroactively and individuals who are or were in a "transition period."
- Tailor the COBRA Model Notices to meet the administrative procedures and other requirements of the group health plan. Keep in mind that because continuation coverage requirements vary among states, the Updated Alternative Notice should be modified as necessary to conform to the applicable State law.
- Review severance policy for COBRA implications.
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Update employee handbooks and/or other company policies concerning COBRA to provide notice of the subsidy extension.

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Reach out to third-party administrators to make sure that group health plans reflect the COBRA subsidy extension accurately.

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Determine whether any updates to plan documents are necessary.

If you have any questions about the COBRA subsidy extension, please contact the author of this Legal Alert, Lindsay O'Brien at (904) 357-2005, or at lobrien@fordharrison.com, or any member of the Employee Benefits Group.