

Legal Updates & News

Legal Updates

COBRA Model Notices Released

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The American Recovery and Reinvestment Act of 2009 (the “Act”) enacted several new requirements that will impact the COBRA responsibilities of employers maintaining group health plans.^[1] In broad terms, the Act’s COBRA-related provisions do two things, both related to individuals terminated between September 1, 2008, and December 31, 2009: (1) provide for a subsidy of COBRA premiums for a nine-month period for involuntarily terminated employees and their qualified beneficiaries and (2) require certain additional notifications relating to the COBRA subsidy.

As required by the Act, the Department of Labor released model COBRA notices on March 19, 2009. Each qualified beneficiary^[2] who has had a COBRA “qualifying event”^[3] between September 1, 2008, and December 31, 2009 is required to receive one of the following notices. Each model notice is designed for a particular group of qualified beneficiaries and contains information to help satisfy the Act’s notice provisions.

Related Practices:

- › [Employee Benefits and Executive Compensation](#)
- › [Federal Tax](#)
- › [Tax](#)

- [General Notice](#). A general notice must be sent to all qualified beneficiaries subject to the general federal COBRA provisions **who have not yet received a COBRA notice and who** experienced a COBRA-qualifying event at any time from September 1, 2008, through December 31, 2009, regardless of the type of qualifying event (i.e., even if the beneficiary is not qualified for subsidized benefits under the Act). Also, the general notice should be given to any qualified beneficiary with a qualifying event on or after February 17, 2009, who already received a COBRA notice not containing information regarding the COBRA subsidy under the Act. This full version of the model general notice includes information on the premium reduction as well as information required in a COBRA election notice. This notice must be provided by the later of (i) within the usual COBRA notification timeline or (ii) April 18, 2009.
- [General Notice \(Abbreviated Version\)](#). The abbreviated version of the model general notice is for qualified beneficiaries who experienced a COBRA-qualifying event at any time from September 1, 2008, through December 31, 2009, **who have already received a COBRA**

notice, and who have elected and are still receiving COBRA benefits. This notice includes the same information as the general notice described above regarding the availability of the premium reduction and other rights under the Act, but does not include the COBRA coverage election information. An abbreviated version may be sent in lieu of the full version to individuals who experienced a qualifying event on or after September 1, 2008, have already elected COBRA coverage, and are currently enrolled in COBRA. This notice must be provided by April 18, 2009.

- **Notice in Connection with Extended Election Periods.** This notice is for individuals eligible for a COBRA subsidy under the Act who (i) had a qualifying event at any time on or after September 1, 2008, and **before February 17, 2009**, (ii) **received a COBRA notice**, and (iii) **are not currently enrolled in COBRA** (either because COBRA continuation coverage was not elected, or because it was subsequently discontinued). This notice includes information on the Act's additional election opportunity, as well as premium reduction information. This notice must be provided by April 18, 2009.

The [DOL](#) and the [IRS](#) also have issued expanded questions and answers on the subsidy requirements.

As you consider the administrative issues associated with the COBRA subsidy, bear in mind that the model notices may not address key aspects of your existing COBRA policies and procedures. Before distributing these notices to your "assistance eligible individuals" and other qualified beneficiaries, you should ensure that they are cross-checked against your existing COBRA notices, policies, and procedures and that any ambiguities or inconsistencies are resolved. Even if your COBRA administration process has suffered from a little benign neglect in recent years, now would be an excellent time to reconsider it and make appropriate updates. If you have questions or concerns about the COBRA subsidy or COBRA compliance more generally, or if you would like some assistance in customizing the model notices to fit your particular needs, please contact a member of Morrison & Foerster LLP's Employee Benefits Department, listed on the left of this page.

Footnotes

[1] Our previous legal update on the COBRA provision of the Act may be found [here](#).

[2] Qualified beneficiaries generally include the terminated employee, his or her spouse, and his or her dependent child.

[3] Qualifying events generally include losses of group health plan coverage as a result of (i) a termination or reduction of hours of a covered employee, (ii) the death of a covered employee, (iii) the divorce or legal separation of a covered employee from the employee's spouse, (iv) a covered employee's becoming entitled to Medicare benefits, (v) a dependent child's ceasing to be a dependent child of the covered employee under the generally applicable requirements of the plan, and (vi) certain bankruptcy proceedings.