

Labor & Employment Alert

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Stimulus Plan Extends and Enhances COBRA Benefits

In light of the economic downturn, public employers have been forced to consider and, in some cases, to implement layoffs as part of a greater labor cost reduction strategy to address lost tax and other revenues. While it is always a difficult decision to furlough employees, the federal government has stepped in to provide some relief to these individuals. The recently passed federal Stimulus Plan amended benefits provided under COBRA and the health care coverage continuation provisions of the Public Health Services Act. Any employer with 20 or more employees and thereby subject to the requirements of COBRA or the PHS Act with an employee who has or will have been involuntarily terminated during the period from September 1, 2008 through December 31, 2009 must take action.

The most significant changes to these benefits for former employees are as follows:

- For a period of up to nine months beginning on or after March 1, 2009, any qualified beneficiary whose employment is involuntarily terminated between September 1, 2008 and December 31, 2009 is required to pay only 35 percent of the applicable premium amount, rather than up to 100 percent of the premium.
- Employers are reimbursed for the 65 percent of the premium they pay through an offsetting payroll tax credit.
- The 65 percent premium subsidy is tax free for taxpayers with a modified gross income of up to \$125,000 (\$250,000 in the case of a joint return).
- Employers must provide each qualified former employee with written notice regarding the availability of subsidized COBRA and PHS Act premiums, the availability of an extended election period, and the individual's rights and obligations to receive subsidized COBRA or PHS Act continuation coverage.
- An additional COBRA election period allows individuals who did not elect COBRA continuation coverage as of Feb. 17, 2009, but who would otherwise be considered a qualified former employee on that date, to elect COBRA subsidized coverage. This individual will be able to elect subsidized coverage going forward, but not retroactively. Again, employers must provide a notice to these former employees regarding the extended COBRA election period and subsidy.

With regard to informing former employees of their rights to these expanded benefits, the U.S. Department of Labor released model notices to assist employers in complying with the new requirements. A brief description and a link to each model notice can be found below.

General Notice (Full version) – The General Notice is the COBRA election notice updated to include information about subsidized COBRA premiums required by the Stimulus Plan. This Notice can be used for all qualified beneficiaries who experience a qualifying event at any time from September 1, 2008 through December 31, 2009.

www.dol.gov/ebsa/COBRAGeneralnoticefullversion.doc

General Notice (Abbreviated version) – The abbreviated notice is an abbreviated version of the General Notice that does not include the COBRA coverage election information. It 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 still have coverage.

www.dol.gov/ebsa/COBRAGeneralnoticeabbreviatedversion.doc

Alternative Notice – Insurance carriers that provide group health insurance coverage in accordance with state law must send the Alternative Notice to persons eligible for continuation coverage under state law.

www.dol.gov/ebsa/COBRAalternativenotice.doc

Notice in Connection with Extended Election Periods (“Extended Election Notice”) – This Notice must be sent to any assistance-eligible individual who (i) had a qualifying event at any time from September 1, 2008 through February 16, 2009, and (ii) either did not elect COBRA continuation coverage, or who elected it but subsequently discontinued COBRA. This notice must be provided by April 18, 2009.

www.dol.gov/ebsa/COBRAextendedelectionperiodnotice.doc

Employers should immediately begin work internally and with their outside COBRA administrators to update and distribute the required notices.