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LEGAL ALERT

Stimulus Package Affects COBRA Notices

On March 19, 2009, the U.S. Labor Department (DOL) released model notices regarding the new COBRA requirements that were enacted as part of the American Reinvestment and Recovery Act of 2009 (ARRA). The law mandates that plans notify certain current and former participants and beneficiaries about the COBRA premium subsidy and "second chance" COBRA election opportunity by no later than April 18, 2009. The model notices may be found at: http://www.dol.gov/ebsa/COBRAmodelnotice.html

Although plan administrators are not required to use the model notices, using them assures compliance with ARRA's substantive notice requirements.

Background

Among other things, ARRA provides a subsidy for COBRA premiums (and state mini-COBRA premiums) for up to nine months for COBRA-eligible employees who are or were involuntarily terminated between September 1, 2008 and December 31, 2009. The COBRA subsidy also extends to affected spouses and dependents who are COBRA qualified beneficiaries.

As of March 1, 2009, eligible individuals must only be required to pay 35% of the COBRA premium for coverage under a prior employer's group health plan. The employer or health plan pays the remaining 65% of the premium, which will then be reimbursed through a federal payroll tax credit. Individuals who may be entitled to the COBRA subsidy must receive notice of the subsidy on or before April 18, 2009. An individual's eligibility for the subsidy terminates on the earliest of 1) the individual becoming eligible for coverage under another group health plan or Medicare, 2) the end of the nine-month period of subsidy or 3) the end of the original COBRA continuation period.

In addition to providing a subsidy of COBRA premiums, ARRA also provides a special 60-day "second chance" COBRA election period for those individuals who are assistance eligible, but either declined COBRA coverage initially or terminated their COBRA coverage before it expired prior to February 17, 2009. This provision does not apply to state mini-COBRA coverage. Individuals who had qualifying events from September 1, 2008 through February 16, 2009, and either did not elect COBRA continuation coverage, or elected it but subsequently discontinued the coverage, must be notified of the special 60-day "second chance" election period by April 18, 2009.

ARRA also gives plan sponsors the option of permitting COBRA qualified beneficiaries to enroll in coverage that is different from the coverage in which the individual was enrolled at the time of his or her qualifying event. The different coverage 1) must have a premium that is the same or less than the premium for the coverage the individuals had at the time of their qualifying events, 2) must be offered to active employees and 3) cannot be dental-only coverage, vision-only coverage, counseling coverage, a flexible spending arrangement or an on-site medical clinic. If a plan sponsor permits this option to elect a change in coverage, eligible individuals have 90 days after receiving notice to switch benefit options.

Notice Requirements

On or before April 18, 2009, the plan administrator must distribute:

- The General Notice to all COBRA or state COBRA qualified beneficiaries, whether they are currently enrolled in COBRA coverage or not, who have or had a qualifying event during the period from September 1, 2008 through December 31, 2009. This notice may be provided separately (the "abbreviated version") or with the existing COBRA election notice following a COBRA qualifying event (the "full version").

- The Notice in Connection with Extended Election Periods to any individual eligible for the subsidy or any individual who would be eligible for the subsidy if a COBRA continuation coverage election were in effect, i.e., those who had a qualifying event at any time from September 1, 2008 through February 16, 2009, and who either did not elect COBRA continuation coverage or who elected, but subsequently discontinued, COBRA coverage.

Remember that unless specifically modified by ARRA, the existing COBRA notice and timing requirements continue to apply.

What You Should Do Now

The appropriate model notices should be sent out as soon as administratively possible to begin the recipient's election period. While the IRS and the DOL are expected to issue further guidance, it's important to be mindful of the deadlines imposed by ARRA.

If you have additional questions, please visit our website at www.laborlawyers.com or contact a member of the firm's Employee Benefits Practice Group.