

DOL Updated Instructions To Model COBRA Notices

For more information regarding this or any other employment-related issue, please contact your Vorys attorney or a member of the Vorys Labor and Employment Group by calling 614.464.6400.

The Department of Labor (DOL) published new model COBRA notices on March 19, 2009. The notices explain the availability of the government's COBRA premium subsidy under the American Recovery and Reinvestment Act (ARRA). The original instructions published with the notices required that new (post-ARRA) notices be sent to "all qualified beneficiaries...who experienced a qualifying event at any time from September 1, 2008 through December 1, 2009, regardless of the type of qualifying event." The DOL subsequently modified the instructions to exclude certain qualified beneficiaries. See General Notice (full version).

Notice in Connection with Extended Election Periods (second election notice): The DOL intends this notice for individuals who (a) were eligible for COBRA as a result of an involuntary termination of employment that occurs September 1, 2008 through February 16, 2009 and (b) either did not elect COBRA or elected COBRA and subsequently dropped it. Employers have until April 18, 2009 (60 days after ARRA was signed into law) to send notices to this group.

General Notice (abbreviated version): The DOL intends this notice for individuals who are currently on COBRA as a result of qualifying events that occur September 1, 2008 through February 16, 2009.

General Notice (full version): The DOL intends this notice for individuals whose COBRA qualifying events occur

September 1, 2008 through December 31, 2009 who are not in the first two groups. However, under the new instructions, an employer does not need to send this notice to qualified beneficiaries who would otherwise be in this group if they were sent a pre-ARRA COBRA notice before February 17, 2009.

The DOL notices and instructions can be found at www.dol.gov/ebsa/COBRA.html. The DOL website also includes a fourth model notice for use by insurers that are notifying employees of small employers – generally, employers with fewer than 20 employees – of rights under state mini-COBRA laws. All four model notices include a Request for Treatment as an Assistance Eligible Individual form which is a qualified beneficiary's application to the former employer for the COBRA premium subsidy. Note that the model notices need not be used "as is": they may be tailored to an employer's plan and situation.

IRS guidance on the subsidy can be found at www.irs.gov/newsroom/article/0,,id=204505,00.html. The IRS is expected to publish guidance in the coming weeks on the definition of "involuntary termination" and other issues. The DOL model notices assume that the employer will identify employees who have experienced an involuntary termination and the Request for Treatment as an Assistance Eligible Individual form requires employees to certify that their termination of employment was involuntary.

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