

L a b o r & E m p l o y m e n t
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USDOL PUBLISHES NEW MODEL COBRA NOTICES

As we reported in a recent [Alert](#) the American Recovery and Reinvestment Act of 2009 (“ARRA”) made qualified certain beneficiaries eligible to receive a subsidy that will cover 65% of the cost of COBRA continuation coverage for themselves and their eligible dependents for a finite period. Recently, the United States Department of Labor (“USDOL”) made available four new model COBRA notices that advise eligible beneficiaries – *including certain former employees* – of their right to subsidized continuation coverage.

Employers and administrators alike should give their prompt attention to these model “Second Election Notices,” and to planning for compliance under ARRA, because eligible employees are entitled to receive notice of their right to the new COBRA subsidy by [April 18, 2009](#).

In ARRA, Congress directed employers to re-notify every qualified beneficiary – including each affected employee and each of their qualified beneficiaries – who received a COBRA notice after September 1, 2008 that did not refer to the new subsidy rights. The re-notification must inform the qualified beneficiaries of these rights. Further, employers have only until April 18th to send these Second Notices to those affected employees and their beneficiaries who are eligible for ARRA’s subsidy program. To be eligible, the affected employee and dependent must have lost their health or dental insurance coverage (a) through an involuntary termination of employment that (b) occurred between September 1, 2008 and February 16, 2009, and (c) declined or dropped COBRA continuation coverage.

ARRA addressed the mandatory content of COBRA notices to be provided to those who experience a qualifying event between September 1, 2008 and December 31, 2009. It directed the following required content:

1. A prominent description of the available subsidy, including any conditions imposed on entitlement.
2. A form for requests to be treated as a beneficiary who is eligible for the COBRA subsidy.
3. The name, address and telephone number of the plan administrator and any others having information about the COBRA subsidy.
4. A description of the obligations placed on persons paying a subsidized/reduced premium to notify the plan administrator if they become eligible for other coverage (through, e.g., obtaining new employment.)
5. A description of any opportunities to change coverage options (if applicable.)

The Model Notices

The USDOL has posted four model notices for use in differing circumstances.

1. [General Notice \(Full\)](#). This notice is intended as the model to use for all beneficiaries who (1) have a qualifying event between September 1, 2008 and December 31, 2009 and (2) who receive their initial COBRA notice on or after February 17, 2009. See, www.dol.gov/ebsa/COBRAGeneralNoticeFullVersion.doc
2. [General Notice \(Short\)](#). The second notice is intended to fulfill a supplemental function. It is intended to be used to notify beneficiaries who had a

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qualifying event occur between September 1, 2008 and February 16, 2009, and who elected and currently have COBRA coverage. See, www.dol.gov/ebsa/COBRAGeneralNoticeAbbreviatedVersion.doc

3. Second Election Notice for Extended Election Period. Beneficiaries who lost their insurance coverage because of an involuntary termination of employment between September 1, 2008 and February 16, 2009 but who either declined or dropped COBRA coverage are the target of this model notice. See, www.dol.gov/ebsa/COBRAExtendedElectionPeriodNotice.doc

4. Notice of State Law Coverage. This model notice is intended to provide information to beneficiaries whose plans are not subject to COBRA coverage because they do not employ 20 or more employees, but who are employed in states that enacted laws extending COBRA continuation rights to smaller employers (e.g., California, New York, New Jersey, Massachusetts.) See, www.dol.gov/ebsa/COBRAAlternativeNotice.doc

Selection of Appropriate Notice

While deciding who should receive the Second Election Notice will require some analysis, it is not difficult to determine who should receive one of the other model notices based on the plain timing, location and circumstances of the termination of

employment. To identify those who should receive the Second Election Notice the employer must: (i) identify every employee who lost coverage because of an involuntary termination of employment from September 1, 2008 through February 16, 2009; and (ii) determine which of that group either (a) declined COBRA coverage or (b) dropped COBRA coverage after initially electing it. To simplify this potentially burdensome task, employers should consider providing the Second Election Notice to an overinclusive group. An employer can simply mail the Second Election Notice to all former employees whose employment terminated between last September 1 and February 16, regardless of how their employment terminated, and to their eligible dependents, not currently covered by COBRA. This will save administrative time and reduce the chances of making mistakes.

While we counsel our clients on COBRA related issues as a matter of course, every client is unique and solutions must be specifically tailored. We look forward to the opportunity to assist with the new aspects of COBRA. ♦

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This document is a basic summary of legal issues. It should not be relied upon as an authoritative statement of the law. You should obtain detailed legal advice before taking legal action.

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