

NEW COBRA LEGISLATION: REQUIRED NOTICE DEADLINE APPROACHES

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (the “ARRA”) into law. Included among the ARRA’s provisions relating to compensation and benefits are provisions providing a federal subsidy of COBRA continuation coverage for certain individuals whose employment was involuntarily terminated between September 1, 2008 and December 31, 2009 (a “Qualifying Termination”) and their qualified beneficiaries.

Generally, the applicable subsidy period will apply for up to nine months and will cover 65% of the applicable COBRA continuation coverage premium cost, with the eligible individual being required to pay the remaining 35%. Employers will receive the 65% of cost subsidy in the form of payroll tax credits, or if not usable, through reimbursement from the federal government following application for such amounts. The subsidy is phased out incrementally for individuals whose adjusted gross income exceeds \$125,000, with no subsidy being available for an individual with an adjusted gross income in excess of \$145,000. Individuals who did not elect COBRA at the time of a Qualifying Termination will have another chance to elect COBRA coverage, with such coverage, if elected, beginning on February 17, 2009 rather than on the date of the Qualifying Termination.

In order to comply with the ARRA’s requirements, employers are required to send new COBRA notices prior to April 18, 2009. Model notices are available on the Department of Labor’s website at: <http://www.dol.gov/ebsa/cobramodelnotice.html>, with four versions of notice being provided:

- (1) a “full version” general notice, which must be sent to all qualified beneficiaries (not just the covered employee) who experienced a qualifying event at any time from September 1, 2008 through December 31, 2009, AND who either have not yet been provided an election notice or who were provided an election notice on or after February 17, 2009 that did not include the additional information required by the ARRA;
- (2) an “abbreviated” general notice, which may be sent in lieu of the full version notice referred to above, to individuals who experienced a qualifying event on or after September 1, 2008, have already elected COBRA coverage and remain covered;
- (3) an “alternative” notice, which must be sent to qualified beneficiaries whose continuation coverage is subject to state law requirements; and
- (4) an “extended election period” notice, which must be sent to any eligible individual who had a qualifying event at any time from September 1, 2008 through February 16, 2009, and either did not elect COBRA continuation coverage, or who elected it but subsequently discontinued COBRA.

Employers should promptly take any necessary steps to identify all applicable individuals so that appropriate notices may be sent on or prior to the April 18, 2009 deadline.

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If you have any questions concerning the foregoing or would like additional information, please contact David E. Rubinsky (212-728-8635, drubinsky@willkie.com), Katie M. Calabrese (212-728-8865, kcalabrese@willkie.com), or the Willkie attorney with whom you regularly work.

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