

DOL Issues Model Notices Regarding COBRA Premium Reduction

by B. David Joffe

The Department of Labor (DOL) has issued model notices regarding the COBRA premium reduction contained in the American Recovery and Reinvestment Act of 2009 (ARRA). The DOL has a dedicated web page for employers and employees regarding ARRA, which can found at <http://www.dol.gov/ebsa/COBRA>. A link to the model notices is posted on the web page.

Background

Generally, for individuals who are involuntarily terminated from employment during the period from September 1, 2008, through December 31, 2009 (the “Qualifying Period”), ARRA provides a premium reduction under which an assistance eligible individual is only required to pay 35% of the COBRA premium. The premium reduction is provided for up to nine months. In addition, ARRA provides a special election right for “assistance eligible individuals” who were involuntarily terminated from September 1, 2008, through February 16, 2009, but who did not elect COBRA continuation coverage or whose COBRA continuation coverage lapsed.

ARRA requires that a general notice be provided to all individuals who are entitled to elect COBRA continuation coverage during the Qualifying Period—not just assistance eligible individuals. In addition, it requires that notice be provided regarding the special election right with 60 days of the enactment of ARRA (that is, by **April 19, 2009**). To assist plans, ARRA required the Secretary of Labor to issue model notices by today. Accordingly, the DOL has issued the new model notices.

General Notice

The DOL has issued two versions of the general notice and an alternate version for insurers sending notices under state continuation coverage laws. The first “full” version of the general notice provides information on the premium reduction as well as the special election right. The “abbreviated” version only contains information on the premium reduction. According to the DOL, the abbreviated notice 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 it.” The separate, abbreviated notice is helpful because it would likely be confusing for individuals who are currently receiving COBRA continuation coverage to receive information about electing COBRA.

One of the most interesting features about the model notices is the inclusion of a “Request for Treatment as an Assistance Eligible Individual” form. Because the COBRA reduction applies only with respect to an involuntary termination during the Qualifying Period and only with respect to individuals who are not eligible for other group health plan coverage or Medicare, it is necessary to determine whether the requesting individual is eligible. There are also penalties that apply to an individual falsely claiming the premium reduction and an entity falsely claiming the payroll tax credit. The form provides a means for the employer to make a determination to approve or deny the request. Under ARRA, the DOL is separately required to provide for an “expedited review” of denials with the DOL making determinations within 15 business days after an application for review. The DOL apparently intends to use this form as part of the review process.

General Notice for Insurers

Although the new reduction applies to continuation coverage under “comparable” state laws, the notice requirements are different, and the responsibility falls on the insurer. Therefore, the DOL has issued an alternative notice for insurers that provide continuation coverage under a state law. Since continuation coverage varies among states, the DOL cautions that insurers should modify the model notice as necessary to conform it to the applicable state law. Insurers are also directed to refer to the two general notices as “appropriate for use in certain situations.” As drafted, unlike the other general notices, the general notices for insurers will require substantial changes to comport with the relevant state law.

Special Election Notice

For assistance eligible individuals who were involuntarily terminated from September 1, 2008 through February 16, 2009, and either did not elect COBRA continuation coverage or for whom the coverage has lapsed, the DOL has provided a notice form. It includes information on ARRA’s special election right as well as the premium reduction. Again, this notice must be provided by **April 18, 2009**.

If you have any questions about the new COBRA notices, please contact B. David Joffe or one of the other Employee Benefits & Executive Compensation attorneys at Bradley Arant Boulton Cummings LLP.

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