

# Employee Benefits Briefing

## ARRA COBRA SUBSIDY EXTENSION

### *Updated Model Notices Published*

The U.S. Department of Labor (DOL) on January 13, 2010 published updated model COBRA notices that address the COBRA subsidy extension provisions of the Department of Defense Appropriations Act, 2010 (DOD Act). These notices will generally need to be provided to affected individuals by **February 17, 2010**, but certain individuals will need to receive a notice by **January 29, 2010**. Accordingly, immediate attention is required.

As discussed in our previous Briefing (see EMPLOYEE BENEFITS BRIEFING, December 19, 2009, <http://www.vedderprice.com/EmployeeBenefitsBriefingDecember2009/>), the DOD Act extended the ARRA COBRA subsidy eligibility period until February 28, 2010 and increased the maximum period for receiving the COBRA subsidy from 9 months to 15 months. The DOD Act requires employers to notify certain current and former participants and beneficiaries about the COBRA subsidy extension provisions.

### Model Notices

*Updated General Notice*—The updated General Notice is intended to be the primary COBRA notice for individuals who have qualifying events through February 28, 2010. See <http://www.dol.gov/ebsa/COBRAGeneralnoticefullversion.doc>.

The DOL commented in the Release accompanying these updated model notices that individuals who experienced a qualifying event in December 2009 but who were not eligible for COBRA coverage until January 2010 likely did not receive proper notice of the DOD Act subsidy extension. For these individuals, the DOL states that they should be provided with the updated General Notice AND given the full 60 days from the date the updated notice is provided to make a COBRA election.

*Premium Assistance Extension Notice*—Certain individuals who have already been provided with a General Notice that was not updated to reflect the DOD Act subsidy extension provisions must be provided with a supplemental Premium Assistance Extension Notice. See <http://www.dol.gov/ebsa/COBRAPremiumassistanceextensionnotice.doc>. The Premium Assistance Extension Notice must be provided:

- By **February 17, 2010**, to individuals who were assistance eligible individuals as of October 31, 2009 (unless they are in a “transition period,” discussed below) and to individuals who experienced a termination of employment on or after October 31, 2009 and lost health coverage;
- Within 60 days of the first day of the “transition period,” to individuals who are in a transition period. An individual’s “transition period” is the period which begins immediately after the end of the individual’s original 9-month period of subsidized COBRA. An individual is in a transition period only if the subsidy provisions would continue to apply due to the extension from 9 to 15 months and the individual otherwise remains eligible for the subsidy (i.e., he or she is not eligible for coverage under Medicare or any other employer group health plan).

*Example:* For most employers, individuals first became eligible for the ARRA COBRA subsidy on March 1, 2009, which means that these individuals exhausted their 9 months of subsidized COBRA coverage on November 30, 2009. For these individuals, their “transition period” began on December 1, 2009, and the deadline for them to receive this notice is **January 29, 2010**.

- An individual who had stopped paying COBRA premiums due to the absence of the ARRA subsidy will have until the later of February 17th or 30 days after receiving the Premium Assistance Extension Notice to elect to restart paying COBRA premiums at the subsidized rate.

*Updated State Law Coverage Notice*—This notice is intended to provide information to individuals whose plans are not subject to Federal COBRA (i.e., those with fewer than 20 employees) but whose state laws contain continuation rights for small employers. Insurance issuers that provide group health insurance coverage must send the updated Alternative Notice to persons who became eligible for continuation coverage under a State law. See <http://www.dol.gov/ebsa/COBRAalternativenotice.doc>.

If you have any questions regarding this Briefing, please contact **Jessica L. Winski** (312-609-7678), **Philip L. Mowery** (312-609-7642), **Paul F. Russell** (312-609-7740) or any Vedder Price attorney with whom you currently work.

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