



Benefits Alert

Legal developments affecting employee benefits

A publication of Nixon Peabody LLP

MARCH 19, 2009

DOL releases model "stimulus package" COBRA notices for immediate use

By Thomas J. McCord and Steven Mindy

As described in our earlier Benefits Alert of February 20, 2009, the American Recovery and Reinvestment Act of 2009 ("ARRA," also known as the "Stimulus Package") provided for new COBRA premium reductions and second chance election opportunities for certain individuals who lost health plan coverage as the result of an involuntary termination. The Stimulus Package contained new COBRA notice requirements for plan administrators, who must notify any participant who had a COBRA qualifying event since September 1, 2008, about these new opportunities. On March 19, 2009, the Department of Labor ("DOL") released the much-anticipated model notices to help plans comply with the notice requirements.

Plans should consider using these model notices, or a version of the model notice adapted to their unique situation, immediately to satisfy the new notice requirements. If your plan developed an interim COBRA notice to comply with the Stimulus Package, you should compare your notice to the model notices to ensure that it is compliant.

The DOL provided four different model notices, tailored to different situations:

1. A General Notice, which combines the content of the pre-existing COBRA model notice with notice of the new ARRA provisions. This notice is designed to be sent by plans subject to the Federal COBRA provisions to all qualified beneficiaries (not just covered employees) who experience *any* qualifying event at any time from September 1, 2008, through December 31, 2009.
2. An abbreviated General Notice, which includes the same information as the full version regarding the availability of the premium reduction and other Stimulus Package rights, but does not include the regular COBRA coverage election information. Plans may send the abbreviated notice to individuals who: (a) experienced a qualifying event during, on, or after September 1, 2008; (b) who have already elected COBRA coverage; and (c) still have COBRA coverage.

3. An Alternative Notice that insurance companies must send to persons who became eligible for continuation coverage under State “mini-COBRA” laws.
4. A Continuation Coverage Additional Election Notice that plans subject to the Federal COBRA provisions must send to any “assistance eligible individual” (or any individual who would be an assistance eligible individual if a COBRA continuation election were in effect) who: (a) had a qualifying event at any time from September 1, 2008, through February 16, 2009; and (b) either did not elect COBRA continuation coverage, or who elected it but subsequently discontinued COBRA. Generally an “assistance eligible individual” is an individual who was involuntarily terminated on or after September 1, 2008, and who was otherwise eligible for COBRA. This notice includes information on the Stimulus Package’s additional election opportunity, as well as premium reduction information. Plans must provide this notice by April 18, 2009.

The model notices are available on the DOL’s website at <http://www.dol.gov/ebsa/COBRAModelNotice.html>.

In addition to the model notices, the DOL published a new COBRA premium reduction FAQ for employers (<http://www.dol.gov/ebsa/faqs/faq-cobra-premiumreductionER.html>). Although the FAQ provides some additional guidance, the DOL still has not addressed what constitutes an “involuntary termination” for the purposes of qualifying for the premium reduction. Nonetheless, the Treasury Department and the IRS have indicated that they will likely issue guidance on involuntary terminations before the end of March or in early April.

If you need assistance in tailoring any of these notices to your particular plan, or have other questions, please contact your regular Nixon Peabody attorney or one of the following members of our Employee Benefits Team:

- David S. Foster at 415-984-8331 or dfoster@nixonpeabody.com
- Christian D. Hancey at 585-263-1147 or chancey@nixonpeabody.com
- Sherwin Kaplan at 202-585-8224 or skaplan@nixonpeabody.com
- Brian Kopp at 585-263-1395 or bkopp@nixonpeabody.com
- Thomas J. McCord at 617-345-1337 or tmccord@nixonpeabody.com
- Steven Mindy at 585-263-1106 or smindy@nixonpeabody.com
- Eric Paley at 585-263-1012 or epaley@nixonpeabody.com
- Kate Ulrich Saracene at 585-263-1438 or ksaracene@nixonpeabody.com