



## ***DOL POSTS MODEL NOTICES FOR THE COBRA SUBSIDY***

The Department of Labor has just posted Model Notices related to the COBRA subsidy. Each of the notices includes an explanation of the subsidy provisions, as well as appropriate election forms. Employers will have some options as to which forms can be used for different groups of affected beneficiaries, but will have to at least send a version of the General Notice to everyone experiencing a qualifying event from September 1, 2008 through December 31, 2009, regardless of whether an involuntary termination of employment is involved, as well as an accompanying notice for those who will now be able to get a second chance to elect COBRA. Absent further guidance, notices for those with qualifying events on or after September 1, 2008 and before February 17, 2009 must be sent by **April 18, 2009**, as described below.

The Model Notices include:

- A **General Notice** that must be sent to all persons experiencing a COBRA qualifying event at any time from September 1, 2008 through December 31, 2009, regardless of whether the coverage was lost due to an involuntary termination of employment. There are two versions of the General Notice, the full version and the abbreviated version. The full version will work for everyone. It includes the regular COBRA notice, as well as the subsidy information and the election materials for both. The abbreviated version can be sent just to those who elected COBRA when first eligible on or after September 1, 2008 and are still on it as of February 17, 2009. That group does not need the general COBRA information, since they have already elected COBRA, but will get the subsidy information and election materials.

The General Notice (either version) should be sent by **April 18, 2009** to those with qualifying events on or after September 1, 2008 but before February 17, 2009. For qualifying events on or after February 17th, it should be sent in accordance with the normal COBRA timeframes.

The General Notices can be found at:

<http://www.dol.gov/ebsa/COBRAGeneralNoticeFullVersion.doc>

<http://www.dol.gov/ebsa/COBRAGeneralNoticeAbbreviatedVersion.doc>

- A **Notice in Connection with Extended Election Periods** that must be sent to certain individuals who had a qualifying event at any time on or after September 1, 2008 through February 16, 2009 and who did not elect COBRA when first eligible or later dropped it. This notice supplements the General Notice and allows affected individuals to claim the right to elect COBRA and the subsidy from March 1. It is not clear whether

this notice can be sent only to so called “assistance eligible individuals” (“AEIs”) – those who suffered an involuntary termination on or after September 1, 2008 and, therefore, have a right to the “second chance” – or to anyone who had a qualifying event during the period. It is likely that an employer will be in compliance if this notice is sent to the broader group. The notice addresses anyone who had a qualifying event and allows them to claim that they are an AEI. Sending this notice to the broader group will allow employers to deal with eligibility on a case-by-case basis for those who actually send in elections, as opposed to trying to classify everyone who had a COBRA qualifying event during the time period as either an involuntary termination or not. Some employers, however, may opt for the narrower group in order to avoid the administrative burdens of a larger response. It is not clear whether we will receive further guidance on this issue or whether employers will be left to make their own decisions.

This notice should accompany the General Notice for affected individuals and must be sent by **April 18, 2009**. It can be found at:

<http://www.dol.gov/ebsa/COBRAextendedelectionperiodnotice.doc>

- A **Model Alternative Notice** for use where employees are covered by State Cobra-like continuation coverage applicable to small groups. This notice will have to be modified on a State by State basis to reflect the differences in application. This notice can be found at:

<http://www.dol.gov/ebsa/COBRAalternativenotice.doc>

### **Cautions and Next Steps**

The Model Notices are not “ready for shipment”, as is. They require careful reading; elimination or amplification of optional provisions, such as the right to choose optional coverages; inclusion of contact information and premium amounts; and consideration of which forms will be used and to which groups they will be sent, as discussed earlier. We expect that there will be discussion in the coming days of some of the issues we have raised. Although the April 18th deadline is not far off, there is some time left to give consideration to how to implement the new notice requirements. We will be following these developments and offering you additional information and guidance.

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