

Employee Benefits & Executive Compensation Client Service Group

To: Our Clients and Friends

March 20, 2009

Department of Labor Issues Model Notices on New COBRA Subsidy

Yesterday the U.S. Department of Labor issued model notices addressing the new COBRA subsidy provision of the American Recovery and Reinvestment Act of 2009 ("ARRA"):

<http://www.dol.gov/ebsa/COBRAModelNotice.html>.

Administrators of group health plans should immediately customize the model notices and distribute within the applicable time frame. In tailoring the model notices to meet your needs be sure to include the name, address, and telephone number of the Plan Administrator and any other contact who will be providing assistance to individuals applying for the subsidy.

On its web page, the Department of Labor provides three different notices applicable to Federal COBRA coverage. Commentators have noted inconsistencies between the general instructions, the headers on the notices and the provisions of ARRA which has resulted in some confusion as to whom each notice must be distributed. The Department of Labor has informally indicated to Bryan Cave that the notices are intended to be used as follows:

General Notice (full version): This notice goes to all individuals and their qualified beneficiaries *who experienced a qualifying event of any kind* between September 1, 2008 through December 31, 2009. It appears that individuals who receive this notice do not need to be provided with the General Notice (abbreviated version) or the Notice in Connection with Extended Election Periods.

If you already sent a COBRA notice without the subsidy information, and the individual is still within his or her COBRA election window, you should send the general notice as soon as possible to ensure your previously issued COBRA notice meets the requirements under ARRA. While you have until April 18, 2009 to provide this notice, the end of the 60-day period for electing COBRA continuation coverage is measured from when a complete notice including the subsidy information is provided to the qualified beneficiary.

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General Notice (abbreviated version): This notice goes to all individuals and their qualified beneficiaries *who experienced a qualifying event of any kind* on or after September 1, 2008, who have already elected COBRA coverage, and still have it.

Notice in Connection with Extended Election Periods: This notice should go to all individuals and their qualified beneficiaries *who lost coverage due to a voluntary or involuntary termination* occurring between September 1, 2008 and February 16, 2009 and either did not elect COBRA, or who elected it and subsequently discontinued it. This notice must be provided by April 18, 2009.

The Department of Labor also issued an Alternative Notice applicable to continuation coverage under State law (also known as Mini-COBRA). This notice should not be used if you are subject to federal COBRA.

DOL Releases Model Defined Benefit Plan Annual Funding Notice

The U.S. Department of Labor recently provided limited guidance and a model notice for defined benefit plans to comply with the annual funding notice requirements of the Pension Protection Act of 2006.

For plan years beginning after 2007, all defined benefit plans insured by the Pension Benefit Guaranty Corporation (PBGC) must provide an annual funding notice to plan participants, beneficiaries, labor organizations representing participants and the PBGC. Summary annual reports for these plans are no longer required. Previously, only multiemployer defined benefit plans were required to provide this type of notice.

Generally, the notice must be provided no later than 120 days after the close of the plan year. For example, calendar year plans must provide their first annual funding notice no later than April 30, 2009. For plans covering 100 or fewer participants, the annual funding notice must be provided no later than the date the plan's annual Form 5500 is filed.

We recommend use of the model notice, but other forms of notice may be used so long as they contain all required information set forth in ERISA Section 101(f). The notice may contain additional information and it may be issued electronically in accordance with the DOL electronic disclosure requirements.

We urge you to contact any member of the Bryan Cave LLP Employee Benefits and Executive Compensation Group listed below if you require assistance or have any questions regarding the COBRA subsidy and/or annual funding notice requirements described in this Bulletin.

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