

MEMORANDUM TO CLIENTS

January 15, 2010

RE: DOL Issues New Model Notices for the COBRA Subsidy Extension Provisions of the 2010 Department of Defense Appropriations Act

On January 13, 2010, the Department of Labor ("DOL") issued new model notices (available at <http://www.dol.gov/ebsa/COBRAmode notice.html>) related to extension of the COBRA premium assistance ("COBRA subsidy") program provided in the 2010 Department of Defense Appropriations Act ("DOD Act"). The American Recovery and Reinvestment Act of 2009 ("ARRA") created the COBRA subsidy program. The DOD Act, enacted on December 19, 2009, extended the COBRA subsidy eligibility period from December 31, 2009 to February 28, 2010 and the maximum COBRA subsidy period from 9 months to 15 months. ARRA and the DOD Act added requirements to the COBRA election notice requirements.

Group health plans and employers can, but are not required to, use the model notices to comply with the COBRA election notice requirements as amended by ARRA and the DOD Act. There are three model notices, each designed for a particular group of qualified beneficiaries, and the DOL website contains the following instructions regarding distribution:

- Updated General Notice

Plans subject to the Federal COBRA provisions must provide the updated **General Notice** to all qualified beneficiaries (not just covered employees) who experienced a qualifying event at any time from September 1, 2008 through February 28, 2010, regardless of the type of qualifying event, and who have not yet been provided an election notice. This model notice includes updated information on the premium reduction as well as information required in a COBRA election notice.

Note: Individuals who experienced a qualifying event (that was a termination of employment) in December 2009 but who were not eligible for COBRA coverage until January 2010 were likely not provided proper notice. These individuals should get the updated **General Notice** AND the full 60 days from the date the updated notice is provided to make a COBRA election.

- Premium Assistance Extension Notice

Plan administrators must provide notice to certain individuals who have already been provided a COBRA election notice that did not include information regarding ARRA, as amended. This model **Premium Assistance Extension Notice** includes information about the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act. Listed below are the affected individuals and the associated timing requirements.

- Individuals who were "assistance eligible individuals" as of October 31, 2009 (unless they are in a transition period - *see below*), and individuals who experienced a termination of employment on or after October 31, 2009 and lost health coverage (unless they were already provided a timely, updated

General Notice) must be provided notice of the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act by February 17, 2010;

- Individuals who are in a "transition period" must be provided this notice within 60 days of the first day of the transition period. An individual's "transition period" is the period that begins immediately after the end of the maximum number of months (generally nine) of premium reduction available under ARRA prior to its amendment. An individual is in a transition period only if the premium reduction provisions would continue to apply due to the extension from nine to 15 months and they otherwise remain eligible for the premium reduction.

Note: To some extent, the groups listed above overlap - creating a situation where an individual may be entitled to multiple notices. Providing the **Premium Assistance Extension Notice** by the earliest date required will satisfy the notice requirement(s).

- Updated Alternative Notice

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. Continuation coverage requirements vary among States and issuers should modify this model notice as necessary to conform it to the applicable State law. Issuers may also find the model **Premium Assistance Extension Notice** or the updated model **General Notice** appropriate for use in certain situations.

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We have been working with clients to address questions regarding these distribution instructions and to add language to notices that are not model notices. Please let us know if you have questions. You can contact your regular Groom attorney or any of the Health and Welfare Practice Group attorneys listed below:

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