

March 22, 2010

## MEMORANDUM TO CLIENTS

### **Re: New Model Notices Issued for the COBRA Subsidy Extension Provisions of the Temporary Extension Act**

On March 17, 2010 the Department of Labor ("DOL") issued new model notices (available at <http://www.dol.gov/ebsa/COBRAModelNotice.html>) related to the extension of the COBRA premium assistance ("COBRA subsidy") program provided in the Temporary Extension Act of 2010 (H.R. 4691) ("TEA"). The American Recovery and Reinvestment Act of 2009 ("ARRA") created the COBRA subsidy program. TEA, enacted on March 2, extended the COBRA subsidy eligibility period from February 28, 2010 to March 31, 2010.

Group health plans and employers may, but are not required to, use the model notices to comply with the COBRA election notice requirements as amended by ARRA, the Department of Defense Appropriations Act for Fiscal Year 2010 (which extended the subsidy period to February 28, 2010) and TEA. There are five model notices, each designed for a particular group of qualified beneficiaries. The Department of Labor website provides the following guidance regarding distribution:

#### **Model 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 March 31, 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) on or after March 1, 2010 may not have been 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.

#### **Model Notice of New Election Period**

Plans subject to continuation coverage provisions under Federal or State law should provide, within 60 days of the date of the termination of employment, a **Notice of New Election Period** to all individuals who:

- experienced a qualifying event that was a reduction in hours at any time from September 1, 2008 through March 31, 2010;
- subsequently experience a termination of employment at any point from March 2, 2010 through March 31, 2010; and

- either did not elect continuation coverage when it was first offered OR elected but subsequently discontinued the coverage.

Individuals who experience an involuntary termination of employment after experiencing a qualifying event that consists of a reduction of hours **MUST** be provided this notice within 60 days of the termination of employment.

### **Model Supplement Information Notice**

Plans that are subject to continuation coverage provisions under Federal or State law should provide the **Supplemental Information Notice** to all individuals who **elected and maintained continuation coverage** based on the following qualifying events:

- terminations of employment that occurred at some time on or after March 1, 2010 for which notice of the availability of the premium reduction available under ARRA was not given; or
- reductions of hours that occurred during the period from September 1, 2008 through March 31, 2010 that were followed by a termination of the employee's employment that occurred on or after March 2, 2010 and by March 31, 2010.

Individuals who experience an involuntary termination of employment after experiencing a qualifying event that consists of a reduction of hours **MUST** be provided this notice within 60 days of that termination. Individuals with qualifying events that occurred on or after March 1, 2010 for which notice of the availability of the premium reduction available under ARRA was not given **MUST** be provided this notice before the end of the required time period for providing a COBRA election notice.

### **Model Notice of Extended Election Period**

Plans that are subject to continuation coverage provisions under Federal or State law **MUST** provide, before the end of the required time period for providing a COBRA election notice, the **Notice of Extended Election Period** to all individuals who:

- experienced a qualifying event that was a termination of employment at some time on or after March 1, 2010;
- were provided notice that did not inform them of their rights under ARRA, as amended by TEA; and
- either chose not to elect COBRA continuation coverage at that time OR elected COBRA but subsequently discontinued that coverage.

## Model Updated Alternative Notice

Insurance issuers that offer group health insurance coverage that is subject to comparable continuation coverage requirements imposed by State law must provide the **Alternative Notice** to ALL qualified beneficiaries, not just covered employees, who have experienced a qualifying event through March 31, 2010. However, because continuation coverage requirements vary among States, it should be further modified to reflect the requirements of the applicable State law. Issuers of group health insurance coverage subject to this notice requirement should feel free to use the model **Alternative Notice**, the model **Notice of New Election Period**, the model **Supplemental Information Notice**, the model **Notice of Extended Election Period**, or the model **General Notice** (as appropriate).

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Congress is currently considering other measures that would extend the COBRA subsidy. We will keep you updated on the status of those measures.

We have been working with clients to address questions regarding these distribution instructions and to revise model notices where appropriate. Please let us know if you have questions. You may contact your regular Groom contact or any of the Health and Welfare practice group attorneys listed below:

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