Advisory

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Revised Model Notices for COBRA and State "Mini-COBRA" Subsidies

by Mark C. Jones

The Department of Labor has revised the model notices employers may use to inform eligible employees and family members of the temporary subsidy on premiums for continuation health care under federal COBRA and comparable state law. The revised notices reflect the extended subsidy periods put into place by the Department of Defense Appropriations Act of 2010. ***Plan administrators are advised to provide notice of the extensions as soon as practicable to limit the period in which eligible individuals who have reached the end of the original subsidy period may elect retroactive coverage.***

Under the American Recovery and Reinvestment Act of 2009 ("ARRA"), employees who are involuntarily terminated on or after September 1, 2008 may be eligible to receive a 65% subsidy toward their premiums on health insurance continuation coverage. ARRA's premium subsidy provisions apply to group health plans subject to the federal COBRA rules under ERISA or to state laws comparable to COBRA, such as so-called "mini-COBRA" programs. The Department of Defense Appropriations Act of 2010 (the "DOD Act"), discussed in our Advisory dated **January 4, 2010**, extended the maximum period in which employees who are involuntarily terminated may receive a subsidy on premiums for continuation health care coverage from nine to 15 months. The DOD Act also extended the period in which an eligible termination of employment may occur by two months, to February 28, 2010.

Plan administrators are required to include notice of the changes to the premium subsidy provisions in any COBRA election notice provided to any individual or covered family member of an individual whose employment is terminated involuntarily between September 1, 2008 and February 28, 2010. Plan administrators are also required to provide notice of the extended subsidy period to any individuals who may have already received a COBRA election notice describing the original subsidy period if they were eligible for the premium subsidy as of October 31, 2009 or their employment was terminated involuntarily on or after October 31, 2009. The deadline for providing this notice is February 17, 2010.

In addition, notice of the extended subsidy period must be provided to any eligible individual whose COBRA subsidy period would have ended at the end of the original nine-month subsidy period had it not been extended under the new law. Under the DOD Act, plan administrators must provide this notice no later than 60 days after the end of the individual's original subsidy period. **However, individuals who allowed their COBRA coverage to lapse at the end of the original subsidy period have a continuing right to reinstate their continuation coverage retroactively until 30 days after notice of the extended subsidy period is provided (or, if later, February 17, 2010). Therefore, plan administrators are best advised to distribute the new notice to these individuals as soon as practicable.**

The revised model notices are available on the Department of Labor's website at http://www.dol.gov/ebsa/COBRAmodelnotice.html, or you may contact your regular Pillsbury Executive Compensation & Benefits attorney for copies.

If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work or any of the members of the Executive Compensation & Benefits group.

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