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January 19, 2010

Client Alert – New Notices for COBRA Subsidy Extension

Dear Client:

On December 23, 2009, we wrote to you regarding the extension of the COBRA subsidy. On December 19th, the President signed a law pursuant to which the 1) COBRA subsidy eligibility period was extended by two months to include involuntarily terminations occurring on or before February 28, 2010, which terminations result in loss of group health insurance coverage and 2) the maximum period of COBRA subsidy coverage was increased from nine to fifteen months. The new law also requires employers to notify certain current and former participants of the extension and related information. The Department of Labor (DOL) has now made available model notices for use in connection with these new requirements.

There are several types of notices. The General Notice, which must be provided to all covered employees and qualified beneficiaries, regardless of qualifying reason, has been updated to include information on the premium reduction. All persons experiencing a qualifying event at any time from September 1, 2008 through February 28, 2010, who have not yet received an election notice, should receive the General Notice. Individuals experiencing any qualifying event after December 19, 2009, must receive the updated General Notice within the normal timeframes for issuing election notices.

If individuals already received a COBRA election notice that did not include information regarding the COBRA subsidy extension, DOL has developed a model Premium Assistance Extension Notice. Individuals who were "assistance eligible individuals" (had a qualifying event of involuntary termination at any point between September 1, 2008 and February 28, 2010 and timely elected COBRA coverage) as of October 31, 2009 (unless they are in a transition period - *see below*), and individuals who were involuntarily terminated from employment on or after October 31, 2009 and lost health coverage (unless already provided a timely, updated General Notice) must be provided notice of the recent changes made to the premium reduction provisions **by February 17, 2010**.

Individuals who are in a "transition period" must be provided notice of the COBRA subsidy extensions **within 60 days** of the first day of the transition period. The "transition period" is the period which begins immediately after the end of the original nine months of COBRA premium

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reduction, as long as the COBRA premium reductions provisions would apply due to the extension from nine to fifteen months. Individuals in a transition period have the ability to make retroactive payments for certain unpaid reduced premiums. The transition period may include multiple periods of coverage. The retroactive payment(s) for the period(s) of coverage must be made by the later of February 17, 2010, 30 days from when the notice was provided, or the end of the otherwise applicable payment grace period.

If you have any questions or require any assistance on the COBRA subsidy extension, COBRA generally or any other employment law issues, please contact us.

Sincerely,



Angela L. Thomas



Glenn R. Davis



Daniel R. Jameson

The information herein reflects the views of the author. The information should be construed as general guidelines and not interpreted as legal advice.