

January 19, 2010

## Model Notices and Additional Guidance Issued on COBRA Subsidy Extension

The Department of Labor recently issued model notices for employers to use under the COBRA subsidy extension, and the Internal Revenue Service issued additional guidance for an employer claiming on its federal employment tax return (Form 941) the credit for 2009 retroactive coverage arising from the subsidy extension for those individuals who had otherwise exhausted the subsidy period.

### MODEL COBRA SUBSIDY NOTICES:

- **General Notice:** For covered employees who experience a qualifying event after December 19, 2009 and on or before February 28, 2010, the employer must provide to all qualified beneficiaries, within the normal timeframe for providing a COBRA election notice, an updated General Notice that describes the extended COBRA subsidy period.
- **Premium Assistance Extension Notice:** With respect to certain individuals who have already received a General Notice, the employer must provide an additional notice describing the extended COBRA subsidy period. The following groups of individuals must receive the Premium Assistance Extension Notice:
  - Individuals who were receiving the premium subsidy as of October 31, 2009;
  - Individuals who became eligible to receive the subsidy or experienced a termination of employment qualifying event on or after October 31, 2009 and who were not provided a notice that explained the information about the subsidy and the subsidy extension; and
  - Individuals who received the full nine months of premium assistance required before the extension, including those who (i) did not make any payment for a subsequent period of coverage, (ii) made a payment of 35% of the full COBRA premium (or some other amount less than the full COBRA premium), or (iii) paid the full COBRA premium required to maintain the coverage without the subsidy.
- **Alternative Notice:** Employers covered by state continuation coverage laws, rather than COBRA, must provide assistance eligible individuals with a copy of the Alternative Notice within the normal timeframe for providing such notice under state law.

The updated model notices are available at: <http://www.dol.gov/ebsa/COBRAmode notice.html>. You may automatically receive additional guidance from the DOL by subscribing to [www.dol.gov/COBRA](http://www.dol.gov/COBRA) for email updates on the COBRA premium subsidy program.

**FORM 941 GUIDANCE:** The IRS has provided that any COBRA subsidy credit for premium payments received in 2010 relating to retroactive coverage for 2009 attributable to the subsidy extension may not be taken by the employer on its Form 941 for the quarter in 2009 in which the coverage was provided. Instead, the employer either may take the credit for the quarter in 2010 in which the 35% premium payment was received from the eligible individual or a later quarter in 2010. However, if an employer chooses to reduce its payroll tax deposits for a quarter in 2010 in which it receives the 35% premium payment, the employer must claim the credit for the same quarter.

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