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### **EMPLOYERS OF TWO OR MORE EMPLOYEES: COBRA (AND MINI-COBRA) CHANGES REQUIRE YOUR IMMEDIATE ATTENTION WITH RESPECT TO CONTINUATION OF GROUP HEALTH COVERAGE FOR CERTAIN CURRENT AND FORMER PARTICIPANTS AND BENEFICIARIES**

**By: Elizabeth Adler & Nancy Perlman**

The economic stimulus package approved by Congress, known as the American Recovery and Reinvestment Act of 2009 ("ARRA"), includes subsidies under COBRA and provides notice requirements and reelection opportunities. Under ARRA, some workers who were or will be "involuntarily terminated" between September 1, 2008 and December 31, 2009 (and their covered dependents) will be eligible to receive a government subsidy of up to 65% of the cost of their COBRA premiums on a limited basis. Eligible parties will generally be required to pay 35% of their COBRA premiums, and the "person to whom premiums are payable" (which in different cases can mean the employer, the insurer, or a multi-employer plan) will be required to advance payment of the remaining 65% (but will be able to recoup that amount from the government as a credit against payroll taxes). Eligible parties would be able to receive this subsidy for up to nine months for health coverage beginning on or after February 17, 2009. Income limitations apply, and ARRA does not extend the duration of coverage that would otherwise be available under COBRA. Most (but not all) of these requirements also impact employers of 20 or less who are subject to state mini-COBRA laws.

Although the *subsidy* is limited to certain involuntary termination situations, the *notice requirements* are broader, requiring applicable notices to go to covered present/former employees (and their covered dependents) regardless of the type of qualifying event (and thus in situations beyond involuntary termination).

Whereas (federal) COBRA applies to employer groups of 20 or more employees, Massachusetts law provides similar continuation coverage ("mini-COBRA") for employers of 2 to 19 employees. The Commonwealth of Massachusetts is largely following suit with the notice and subsidy principles set forth by ARRA. A notable exception is that -- unlike in the case of employers of 20 or more -- former employees of smaller employers who either did not elect mini-COBRA or elected and then discontinued it for inability to pay, are not presently eligible to opt back in and obtain the

The Department of Labor recently issued model notices that can be used for notifying eligible present or former participants of their rights under ARRA. By going to <http://www.dol.gov/ebsa/COBRA.html> and then clicking on "COBRA ARRA Model Notices", you can obtain the model forms, along with an explanation regarding when each should be used.

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subsidy. More on Massachusetts mini-COBRA requirements can be found in a Consumer Alert available at the Massachusetts Division of Insurance (go to

[http://www.mass.gov/?pageID=ocaterminal&L=4&LO=Home&L1=Consumer&L2=Insurance&L3=Consumer+Alerts&sid=Eoca&b=terminalcontent&f=advisories\\_premassist&csid=Eoca](http://www.mass.gov/?pageID=ocaterminal&L=4&LO=Home&L1=Consumer&L2=Insurance&L3=Consumer+Alerts&sid=Eoca&b=terminalcontent&f=advisories_premassist&csid=Eoca)).

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- General Notices: (1) the full version is for all qualified beneficiaries experiencing a qualifying event between September 1, 2008 and December 31, 2009 (regardless of type of qualifying event); (2) the abbreviated version is for those who have already elected (and remain on) COBRA.
- Extended Notice: This is for certain former employees (and their covered dependents) who experienced a qualifying event from September 1, 2008 to February 16, 2009 and either did not elect COBRA or elected and then discontinued it. This notice must be sent to eligible individuals by **April 18, 2009** and affords an additional 60-day election period starting as of the date the notice is provided. This requirement does not presently apply with respect to Massachusetts employers of less than 20 employees.
- Alternate Notice: This applies to state mini-COBRA plans, such as that in effect in Massachusetts. As discussed above, more on mini-COBRA requirements can be found in a Consumer Alert available at the Massachusetts Division of Insurance.

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Employers should immediately establish a method (including working with plan administrators as appropriate) for identifying and timely notifying all affected parties of their rights under ARRA.

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While the foregoing provides key points of the COBRA subsidy and notice requirements under ARRA, it is not a full recitation of all relevant details. If you have questions or need assistance, please contact Elizabeth Adler ([eadler@lgllp.com](mailto:eadler@lgllp.com)) or Nancy Perlman ([nperlman@lgllp.com](mailto:nperlman@lgllp.com)) via e-mail or telephone (617-951-2800).