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Revised Form I-9 Mandated for Use Starting April 3, 2009

The revised Form I-9 is available and must be used beginning April 3, 2009. In January 2009, the Citizenship and Immigration Services (USCIS) announced that employers must begin using this revised Form I-9 beginning April 3, 2009. The revised Form I-9 that employers must begin using this Friday can be found at the following link:

http://www.uscis.gov/files/form/I-9_IFR_02-02-09.pdf

Employers must complete a Form I-9 for all newly hired employees to verify their identity and authorization to work in the United States. A new rule amended current regulations governing the types of acceptable identity and employment authorization documents employees may present to their employers for completion of the Form I-9. The new rule has the following effects:

- ◆ Changes to the list of acceptable documents on the Form I-9
 - ◇ expired documents are no longer acceptable
 - ◇ includes pre-printed temporary I-551 notation
 - ◇ eliminated Forms I-688, I-688A, and I-688B
 - ◇ adds references to Form I-94A
- ◆ Changes “employment eligibility” to “employment authorization”
- ◆ Changes to the appearance of the form itself

If you have questions regarding the Form I-9 or other workplace law matters, please contact Bert Guy, Tom Scroggins, or Brooke Nixon at (205) 633-0200.

American Recovery and Reinvestment Act Requires Action on COBRA Notices

The American Recovery and Reinvestment Act of 2009, the first piece of legislation enacted under President Obama's administration, includes changes to COBRA requiring employers to take action in the form of additional notices and processing subsidies for COBRA premium payments. The Act requires employers to take certain steps within 60 days from the Act's enactment which includes sending out notices to affected employees on or before **April 18, 2009**. Since the Act was signed into law by President Obama on February 17, 2009, employers have had little time to get acquainted with the new law.

The following is a brief overview of the Act's COBRA provisions and the requirements that employers must follow to be in compliance with the law:

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Amount Employers must pay 65% of eligible employees' COBRA continuation coverage premiums. This subsidy must be paid up front by employers who will later receive a reimbursement from the federal government (discussed below). The percentage is based on the premium the employee is actually charged rather than the maximum amount the employer could charge.

Reimbursement The following parties will be entitled to the reimbursement:

- ◆ Single employer plan: The employer will be entitled to the COBRA subsidy reimbursement;
- ◆ Multiemployer plan: The multiemployer plan will be entitled to the reimbursement; and
- ◆ Insured plans not described above: The insurance company providing the insurance will be entitled to the reimbursement.

Employers must pay the subsidy up front and then receive the reimbursement via a decrease in the amount of payroll taxes owed by the employer. If the reimbursement is greater than the amount of payroll taxes owed, the employer will receive a refund or credit as it would for the overpayment of payroll taxes.

Time Limit Eligible employees are entitled to the subsidy for a maximum of 9 months.

Eligibility Employees who are "involuntarily terminated" (other than for gross misconduct) between September 1, 2008, and December 31, 2009, are eligible for the subsidy. However, not all eligible employees receive the entire 65% subsidy. The amount of the subsidy is reduced for individuals with a modified adjusted gross income of more than \$250,000 (for joint return filers) or \$125,000 (for all other filers). Individuals whose modified adjusted gross income exceeds \$290,000 (for joint filers) and \$145,000 (for all other filers) are not eligible for a subsidy. The subsidy is not available to employees who quit their jobs voluntarily.

Appeal An employee who is denied the subsidy can appeal to the Department of Labor. The Department must rule on the request within 15 days.

Notices Employees who are involuntarily terminated between the date of the Act (February 17, 2009) and December 31, 2009, must be given information about that new subsidy program. This includes information on the availability of the subsidy; the requirements to qualify for the subsidy; and additional information required by the Act, as well as providing the forms necessary for electing COBRA during the special election period (discussed below).

Employers may modify their existing COBRA notices or provide a separate, supplemental notice with the required information.

Employees who were involuntarily terminated between September 1, 2008, and the date of the Act must be given supplemental notices within 60 days of February 17, 2009, informing them of the opportunity to elect COBRA and receive the subsidy. This includes employees who currently have COBRA continuation coverage as well as those employees who do not have a COBRA coverage election in effect on the date of the Act (including employees who elected COBRA coverage but whose coverage ended because of non-payment). This means that employees who do not currently have a COBRA coverage election in effect are entitled to a special election period whereby they have 60 days from the date of the notice to elect COBRA continuation coverage. For employees who choose COBRA coverage during the special election period, the COBRA coverage period ends when the coverage would have ended had the employee elected COBRA when initially eligible.

On March 20, the Department of Labor issued model notices that can be used to satisfy the Act's requirements. A "General Notice" in both long and abbreviated form designed to be given to eligible persons who suffered an involuntary termination and have either elected COBRA or have not yet made a decision on whether to elect COBRA is available. The "Notice in Connection



"...employees who do not currently have a COBRA coverage election in effect are entitled to a special election period whereby they have 60 days from the date of the notice to elect COBRA continuation coverage."



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with Extended Election Periods” is designed to be given to any eligible person who declined COBRA coverage or discontinued it early as a result of an involuntary termination between September 1, 2008, and February 16, 2009. These notices, and an explanation of when each notice is required, can be found at:

<http://www.dol.gov/ebsa/COBRAModelNotice.html>.

If certain conditions are met, employers may allow eligible employees to elect different coverage from coverage held on the date of the COBRA qualifying event. If the employer allows this option, it must provide the employee with an election notice and provide an election period of not less than 90 days.

Employer Duties Employers should generally have begun providing the subsidy on March 1, 2009. However, it is permissible for eligible employees to pay the full premium during the months of March and April 2009. If an eligible employee pays the full COBRA premium during periods of coverage for March and April 2009, the plan administrator must credit the subsidized portion of the premium against future COBRA premiums (if the plan administrator reasonably expects the overpayment to be fully applied to future COBRA premiums within 180 days) or refund the subsidized portion within 60 days.

Special Rules Special rules apply for employees who have a non-forfeitable right to receive pension benefits from the Pension Benefit Guaranty Corporation. There are also specific rules for employees who are Trade Adjustment Assistance eligible.

A person’s eligibility for the subsidy ends when he or she becomes eligible for coverage under another group health plan (usually through another job) or Medicare; at the end of the nine-month subsidy period; or at the end of the original COBRA continuation period.

The appropriate model notices should be sent as soon as possible to begin the employee’s election period and comply with ARRA’s statutory deadlines.

On March 31, 2009, the IRS issued Notice 2009-27 which provides additional guidance on the ARRA’s COBRA continuation coverage. The guidance, in an easy to follow question/answer format can be found at: <http://www.irs.gov/pub/irs-drop/n-09-27.pdf>

If you have any questions regarding the ARRA’s COBRA continuation program, please contact Bert Guy, Tom Scroggins, or Brooke Nixon at (205) 633-0200.



“A person’s eligibility for the subsidy ends when he or she becomes eligible for coverage under another group health plan or Medicare;”

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