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Attorneys At Law

HR Alert (New COBRA Notices; EFCA Update)

March 23, 2009

Clients and Friends:

We hope you find the following brief update of significant employment law developments helpful:

DOL Issues Model COBRA Notices to Address ARRA Requirements

By now you may know that the American Recovery and Reinvestment Act of 2009 (“ARRA”) created temporary procedures that employers must follow when administering COBRA benefits. Employers must provide a 65% subsidy of the cost of COBRA premiums for up to nine (9) months for eligible individuals but receive a credit against payroll taxes for the cost of this subsidy.

The Department of Labor recently published model COBRA notices to assist employers in their efforts at compliance. Each model notice is intended to apply to a particular group of beneficiaries. For purposes of the following discussion, an “assistance eligible individual” is an individual who meets all of the following requirements:

- Is eligible for COBRA coverage at any time between September 1, 2008 and December 31, 2009;
- Elects COBRA coverage;
- Is a qualified beneficiary as a result of an involuntary termination of a covered employee that occurred during the time period September 1, 2008 through December 31, 2009;
- Is not eligible for Medicare; and
- With limited exceptions, is not eligible for coverage under any other group health plan.

Copies of the following are attached to this email:

- (1) **DOL Model General Notice (full version)**. This notice must be sent to all qualified beneficiaries (not just covered employees) who experience any type of qualifying event from September 1, 2008 through December 31, 2009, and:
 - (a) who have not been provided an election notice; or
 - (b) who were provided an election notice that did not include the additional information required by ARRA.With respect to qualified beneficiaries who would otherwise be entitled to the General Notice (full version) and who have already elected COBRA coverage and still have that coverage, employers may send the **DOL Model General Notice (abbreviated version)**.
- (2) **DOL Model Notice in Connection with Extended Election Periods**. This form must be provided to any assistance eligible individual (defined above)--or any individual who would be an assistance eligible individual if a COBRA continuation election were in effect--who: (a) had a qualifying event at any time from September 1, 2008 through February 16, 2009; and (b) either

did not elect COBRA continuation coverage, or elected it but subsequently discontinued COBRA coverage. This Notice must be provided by April 18, 2009.

- (3) **DOL Model Alternative Notice**. Insurance issuers that provide group health insurance coverage must send the Alternative Notice to persons who became eligible for continuation coverage under a State law.

The IRS has released guidelines for this program, as well as a revised Form 941, which employers will use to claim credit for the COBRA premiums they pay for their former employees. Employers should create a retention system for documents that the IRS requires employers to maintain to support claimed tax credits.

Developments on Progress of Employee Free Choice Act

We continue to monitor developments on the progress of the Employee Free Choice Act (“EFCA”). The EFCA was introduced in Congress on March 10, 2009. As a reminder, this proposed legislation provides for the following:

- If 50% plus one employee in an appropriate bargaining unit sign union authorization cards, the National Labor Relations Board will certify the union as the employees’ representative without first holding a secret ballot election. The absence of an election is significant. The election process provides employers with what may be their best opportunity to communicate their position on unions to employees so that employees may consider both the union’s and the employer’s positions before deciding whether they want to be represented by a union.
- If a union is certified and the parties cannot reach agreement on terms and conditions of employment within a period as short as 120 days, an arbitrator will write the terms and conditions of employment which will bind the parties for a period of two years.
- Employers would be subject to additional penalties for unfair labor practices, including: (1) up to three times back pay for employees terminated in violation of the National Labor Relations Act; (2) fines of up to \$20,000 for each unfair labor practice; and (3) mandatory injunction proceedings for unfair labor practices during campaigns.

If you have not already done so, it is time to begin preparing for this law. Consider, among others: (1) contacting your elected representatives and voicing your opinion; (2) developing an internal statement reflecting your position on unions; (3) determining the nature of your employees’ concerns; (4) reviewing employment policies and practices for compliance with the National Labor Relations Act; and (5) training your supervisors to understand the “dos and don’ts” when confronted with union activity.

Please do not hesitate to contact either one of us, or your preferred Wooden & McLaughlin contact, with questions. On behalf of our Employment and Labor Law Group, we appreciate the opportunity to be of service to you.

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