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Model COBRA Notices Now Available for Employers to Comply with the New Stimulus Act Obligations

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA). As we reported last month, the new stimulus package includes 65% COBRA subsidies for certain workers laid-off or terminated since September 1, 2008, for up to nine months. The ARRA mandates that group health plans subject to COBRA to notify certain current and former participants and beneficiaries about the premium reduction and additional election periods for health care continuation coverage. Group health plans which are not subject to COBRA continuation notice requirements, because the plan is sponsored by an employer with less than 20 employees, are required to provide comparable continuation coverage under state law. Such continuation coverage pursuant to state law is also subject to the ARRA premium reduction and notice requirements, but not the additional election period.

The U.S. Department of Labor (DOL) has issued model subsidy notices for employers to use when notifying employees. Each model notice is designed for a particular group of qualified beneficiaries and contains information to help satisfy ARRA's notice provisions.

[General Notice](#) (Full version) Plans subject to the Federal COBRA provisions must send the General Notice to all qualified beneficiaries, not just covered employees, who experienced a *qualifying event* at any time from September 1, 2008

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through December 31, 2009, regardless of the type of qualifying event, AND who either have not yet elected COBRA coverage or who were provided an election notice on or after February 17, 2009 that did not include the additional information required by ARRA. A "qualifying event" is a loss of health coverage due to a termination or layoff, but may also include other types of separation from employment. This full version includes information on the premium reduction as well as information required in a COBRA election notice.

[General Notice](#) (Abbreviated version) The abbreviated version of the General Notice includes the same information as the full version regarding the availability of the premium reduction and other rights under ARRA, but does not include the COBRA coverage election information. It may be sent in lieu of the full version to individuals who experienced a qualifying event on or after September 1, 2008, and who have already elected COBRA coverage, and still have it.

[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. Cal-COBRA applies to plans sponsored by employers with 2 to 19 employees. Continuation coverage requirements vary among States, and issuers should modify this model notice as necessary to conform it to the applicable State law. Issuers may also find the model Alternative Notice or the abbreviated model General Notice appropriate for use in certain situations.

[Notice in Connection with Extended Election Periods](#) Plans subject to the Federal COBRA provisions must send the Notice in Connection with Extended Election Periods to any "Assistance Eligible Individual" (or any individual who would be an "Assistance Eligible Individual" if a COBRA continuation election were in effect) who:

1. Had a qualifying event at any time from September 1, 2008 through February 16, 2009; and
2. Either did not elect COBRA continuation coverage, or who elected it but subsequently discontinued COBRA.



This notice includes information on ARRA's additional election opportunity, as well as premium reduction information. **This notice must be provided by April 18, 2009.**

Take Away Tips

Employers should update their COBRA notices to include the necessary information required by the new Stimulus Act. An audit should also be conducted to determine which model form needs to be sent, and which individuals are eligible. To access any of these four model notices, please visit the firm's website home page at www.koumaslaw.com.

FEDERAL CONTRACTORS BEWARE OF ADDITIONAL POTENTIAL WAGE CLAIMS



The federal Service Contract Act of 1965 (SCA) sets forth what employers working on federal contracts have to pay their employees. A California Court of Appeal has recently ruled that employees working on federal contracts in California, however, can also sue for *additional* wages and penalties under the California Labor Code.

Naranjo worked for the California company Spectrum Security Services, Inc. as a guard at one of the federal Immigration and Customs Enforcement (ICE) agency's facilities. Although Naranjo was paid the wages set out in the U.S. Secretary of State's wage determination governed by the SCA, he brought a class action claiming Spectrum failed to pay one hour premium pay for missed meal and rest period, a well as waiting time penalties, and that his employer failed to provide accurate wage statements, as required by the California Labor Code.

Overruling the trial court, the California Court of Appeal held that while the SCA wage determinations set out *minimum* wage and hour requirements under federal law, California employers working on federal contracts are still required to comply with California wage and hour laws, including minimum wages. In short, where California law requires an employer to pay more, the employer has to pay more.

Take Away Tips

California federal contractors should conduct wage and hour audits to ensure they are complying with California wage and hour laws as well as federal, and assess any potential liability exposure.

MORE ARBITRATION AGREEMENTS THROWN OUT OF COURT

Many employers may require employees to sign agreements to arbitrate employment related claims, rather than in court. Over the past few years, we have seen numerous court cases finding arbitration agreements contain invalid clauses. Therefore, employers need to pay more attention to proper drafting and implementation of an arbitration agreement. Two California Appellate Courts, issued ruling this past month which should give pause to employers and encourage employers to review arbitration agreements and ensure they are in compliance with current law.

In [*Sanchez v. Western Pizza*](#), an employer's arbitration agreement was thrown out because of a

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class action waiver . In this case, the Court of Appeals said the class action waiver was invalid because it was against public policy. The Court also said the agreement signed by the pizza delivery employee was no good because it was oppressive, and did not sufficiently inform employees of what was involved in arbitrating their claims.

In *Franco v. Athens Disposal Company, Inc.*, a truck driver who filed a class action lawsuit against his employer. The employee claimed Athens did not properly pay overtime or provide meal periods. At the start of his employment, however, he had signed an arbitration agreement which stated that he agreed not to participate in any class action or act as a "private attorney general" to represent anyone other than himself. Athens therefore argued that he could not bring a class action. The Appellate Court disagreed with Athens, reversed the lower court decision, and declared the arbitration agreement's class action waiver invalid. The Court also found the employee could not be prohibited from acting as a private attorney general under California's Private Attorneys General Act (PAGA).

TIP: Reminder: Employers should have any arbitration agreements reviewed for current validity under state and federal laws before relying on them.

UPCOMING SEMINARS

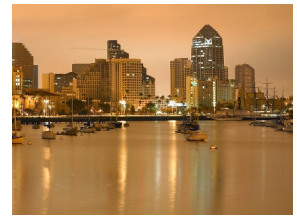
BEST PRACTICES FOR DISCIPLINE & LAYOFFS

Elizabeth Koumas regularly provides legal updates at the monthly luncheon meeting of the East County Personnel Association. Next month, Ms. Koumas will offer guidance on implementing proper discipline and layoffs, especially in the current economic situation leading many businesses to take such drastic measures to stay afloat.

Date: May , 2009 **Time:** 11:30 a.m. to 1:00 p.m.

Location: The Brigantine Restaurant, La Mesa

For more details about the agenda, contact Elizabeth J. Koumas at ejk@koumaslas.com. For more information about membership in East County Personnel Association, please check the Association's website at www.ecopa.net



Register Now!

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