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## CLIENT NEWS BRIEF

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### **FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT CREATES TEMPORARY COBRA SUBSIDY FOR ELIGIBLE EMPLOYEES**

President Obama signed the American Recovery and Reinvestment Act (“ARRA”) on February 17, 2009. The ARRA creates a 65% Consolidated Omnibus Budget Reconciliation Act (“COBRA”) subsidy for eligible employees who were or are involuntarily terminated between September 1, 2008, and December 31, 2009. COBRA gives workers who lose their jobs, and thus their health benefits, the right to purchase group health coverage provided by the plan under certain circumstances. Additionally, under the ARRA, former employees eligible for the subsidy, but who did not elect COBRA coverage or elected and later dropped COBRA coverage, must be offered a “second chance” to enroll in COBRA to take advantage of the subsidy within 60 days of receiving notice from their employer of the COBRA subsidy. Individuals eligible for the subsidy will pay 35% of the COBRA premium for a maximum of nine months. The remaining 65% is covered by the employer (or in some cases the health plan). Employers can then recover the 65% they paid through a payroll tax credit on their quarterly payroll tax return.

The ARRA imposes significant new notice requirements on employers, particularly as employee layoffs and releases may result in the termination of an increased number of employees at the end of the current school year. Under the ARRA, employers are required to notify former employees who were involuntarily terminated on or after September 1, 2008 of their potential eligibility for the subsidy, whether or not the employee elected COBRA coverage at the time he or she was involuntarily terminated. This “second chance” notice to employees is required to be issued prior to April 18, 2009. Thus, employers should review their records to determine the names of the employees terminated since September 1, 2008 who did not elect COBRA coverage or elected and later dropped COBRA coverage so that these employees may be notified of their “second chance” at COBRA benefits. Employers should also be mindful of these new notice requirements and provide the requisite COBRA notice prospectively to any eligible employee who is involuntarily terminated prior to December 31, 2009.

On March 19, 2009, the Department of Labor published model notices in both English and Spanish for employers to use in meeting the new notice requirements. Those model notices, along with a list of Frequently Asked Questions related to the subsidy, may be accessed from the Department of Labor’s website at <http://www.dol.gov/ebsa/cobra.html>.

It is important to note that this new COBRA subsidy does not extend the current period of employee eligibility for COBRA benefits. In addition, the COBRA subsidy is only available to eligible employees and phases out for high income individuals. Finally, there are a number of open questions that are not addressed by the ARRA and, to date, have not been addressed by the federal Department of Labor. For example, the ARRA does not define “involuntary termination” in terms of subsidy-eligible employees. Therefore, we recommend that employers consult with their legal counsel if they are unclear on employee eligibility for the subsidy.

If you have any questions regarding COBRA generally or the COBRA subsidy under the ARRA, or the notice requirements under these laws relating to the new COBRA subsidy, please contact one of our seven offices located statewide.

*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*

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