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## COBRA Subsidy—Overview & Update

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WOODS ROGERS PLC

# Labor & Employment Update

The American Recovery and Reinvestment Act of 2009 (“ARRA”), as amended by the Department of Defense Appropriations Act of 2010, the Temporary Extension Act of 2010, and the Continuing Extension Act of 2010, provides for premium reductions for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”). ARRA was initially implemented as a temporary measure. The law has been extended three times, however, and it remains to be seen whether further extensions will be provided. As of this writing, the law is scheduled to expire May 31, 2010.

Under ARRA, “assistance eligible individuals” pay only 35 percent of their COBRA premiums. The remaining 65 percent is reimbursed to the coverage provider via a tax credit. “Assistance eligible individuals” are: (1) qualified beneficiaries who were involuntarily terminated between September 1, 2008 and May 31, 2010, and who elected COBRA continuation coverage; or (2) qualified individuals who suffered a reduction in hours that resulted in a loss of coverage after September 1, 2008, and who were involuntary terminated between March 2, 2010 and May 31, 2010, regardless of whether the individual initially elected COBRA continuation coverage or whether the individual elected continuation coverage but later discontinued coverage. Assistance eligible individuals are entitled to premium reductions beginning on or after February 17, 2009, and the maximum subsidy period is limited to 15 months.

Individuals who are “assistance eligible” on the basis of a reduction in hours must be given a second opportunity to elect CO-

BRA coverage to take advantage of the COBRA subsidy. For those individuals, the “qualifying event” that triggers COBRA’s 18 month coverage limitation period is the date the reduction in hours caused a loss of coverage. Retroactive COBRA coverage, however, begins on the date the individual was involuntarily terminated. For example, if an individual suffered a reduction of hours on June 10, 2009 that caused a loss of coverage on June 30, 2009, and the individual was involuntarily terminated on March 10, 2010, COBRA’s 18 month coverage period would begin to run on June 10, 2009 (the reduction in hours “qualifying event”) and end on December 10, 2011 (18 months after the reduction in hours “qualifying event”). That individual, therefore, would only be entitled to a COBRA subsidy for 9 months, March 10, 2010 (the date of involuntary termination) to December 10, 2011 (18 months after the reduction in hours).

ARRA, as amended, mandates that plans notify certain current and former participants and beneficiaries about the premium reduction. The DOL released model continuation coverage notices to help plans and individuals comply with these requirements. Each model notice is designed for a particular group of qualified beneficiaries and contains information to help satisfy ARRA's notice provisions.

Plans subject to COBRA must provide an updated General Notice to all qualified beneficiaries (not just covered employees) who: (1) experienced a qualifying event at any time between September 1, 2008 and May 31, 2010, regardless of the type of qualifying event; and (2) who have not yet been provided an election notice. This

model notice includes updated information on the premium reduction as well as information required in a COBRA election notice.

Plans subject to COBRA should provide a Notice of New Election Period within 60 days of termination to individuals who: (1) experienced a qualifying event that was a reduction in hours any time between September 1, 2008 and May 31, 2010; (2) were subsequently terminated between May 2, 2010 and May 31, 2010; and (3) did not elect continuation coverage when it was offered, or elected coverage and stopped paying the applicable premium.

Model Supplemental Notices should be provided by plans subject to COBRA to individuals who elected and maintained continuation coverage if: (1) all qualifying events occurred between March 1, 2010 and April 14, 2010, and the notice given did not inform the

## The Federal HIRE Act

By: Elizabeth Hope Cothran

On March 18, 2010, the Hiring Incentives to Restore Employment Act (the "HIRE Act") was signed into law to help restore some of the jobs lost in the latest economic recession. The HIRE Act provides, among other things, \$17.6 billion in tax incentives to businesses to hire unemployed workers.

### Payroll Tax Exemption

Under the HIRE Act, an employer who hires a new "qualified employee" can save on certain payroll taxes for each qualifying new hire who satisfies the following requirements:

1. the employee begins employment after February 3, 2010, and before January 1, 2011;
2. the employee certifies, by signed affidavit ([IRS Form W-11](#)), that he/she has not been employed for more than forty (40) hours during the 60-day period prior to the beginning of employment; and
3. the employee is not hired to replace another employee (except in the case of voluntary separation or termination for cause).

individual of the premium subsidy under ARRA; or (2) a reduction in hours occurred between September 1, 2008 and May 31, 2010, and the employee was terminated between May 2, 2010 and May 31, 2010.

Also, plans subject to COBRA should provide a Notice of Extended Election Period to all individuals who: (1) were terminated between April 1, 2010 and April 14, 2010; (2) were provided notices that did not inform the individual of their rights under the ARRA, as amended; and (3) did not elect continuation coverage when it was offered, or elected coverage and stopped paying the applicable premium.

For more information concerning the amendments to the COBRA premium reduction rules and for copies of DOL's electronic notices, visit: <http://www.dol.gov/ebsa/COBRAModelNotice.html>

If a private employer hires a qualified employee satisfying these conditions, the employer is not required to pay the employer's portion of the Federal Insurance Contributions Act tax ("FICA") during the employment period from April 1, 2010 to January 1, 2011.

While an employer must still pay the employer portion of the FICA tax for the period from February 4, 2010 to March 31, 2010, any payments can be credited against the employer's portion of the FICA tax due in the second quarter relating to all its employees.

### General Business Tax Credit

In addition, if an employer retains a qualified employee for at least fifty-two (52) consecutive weeks, the employer may receive an additional tax credit equivalent to the lesser of (1) \$1,000 or (2) 6.2 percent of the wages paid to the qualified employee during the fifty-two (52) week period. To qualify for this tax credit, the qualified employee's wages for the last twenty-six (26) weeks must equal at least 80 percent of his/her wages during the first twenty-six (26) weeks of employment.

As a result of this Act, employers should assess their current and future hiring needs to determine the best way to take advantage of these incentives.

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### **OSHA's Enforcement Crackdown on Employer Recordkeeping** *A Joint Woods Rogers PLC—HCR Seminar*

Employers beware—as part of OSHA's new emphasis on recordkeeping, employers should expect increased inspections and heightened enforcement of recordkeeping regulations. Woods Rogers PLC and HCR have teamed up to present this 6 hour seminar to help you ensure your records are correct and your organization is compliant with OSHA's latest rules, regulations and recordkeeping requirements.

**July 14, 2010**  
**8:30 am—3:00 pm**  
**Roanoke Higher Education Center**

Presenters:  
Steve Burt, President, HCR  
Dudley Woody, Attorney, Woods Rogers PLC

Cost: \$99 per person or \$79 per person for 3 or more from the same company

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