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## DOL Issues Model CHIPRA Notice Regarding Premium Assistance

The Children's Health Insurance Program Reauthorization Act of 2009 ("CHIPRA") requires employers offering group health plans, including church plans and governmental plans, to notify employees of their potential rights to receive premium assistance under a state's Medicaid or Children's Health Insurance Program ("CHIP") program. The notice is required to include contact information for each state that has premium assistance for either the CHIP or Medicaid programs where the employees reside. This notification requirement applies to employers with employees that reside in any of the 40 states that provide premium assistance. Employers are not required to notify employees that reside in a state that does not provide premium assistance for either program. As of January 22, 2010, only 10 states do *not* provide such assistance: Connecticut, Delaware, Hawaii, Illinois, Maryland, Michigan, Mississippi, Ohio, South Dakota and Tennessee. While employers are not required to provide notices to employees that reside in those states, for ease of administration and to avoid missing any otherwise eligible employees, we recommend that employers provide the notice to *all* employees. The Department of Labor ("DOL") recently published a model notice (the "Notice") that can be used for this purpose, which can be accessed from the DOL's website at [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

### How Must Employers Provide the Notice?

Employers must provide the Notice automatically, free of charge. Employers need not provide it in a separate mailing. They may combine the Notice with other information such as annual enrollment to reduce administrative costs, if the other requirements for this Notice are met. Thus, the Notice may be furnished concurrent with initial enrollment packages, open enrollment packages, the summary plan description for the plan, or other materials, provided that:

- Such materials are provided to all employees entitled to receive the Notice; and
- The Notice appears separately and in a manner that ensures that an employee who may be eligible for premium assistance could reasonably be expected to appreciate its significance. This "separately" requirement means that the Notice *cannot* be included in the summary plan description for the plan.

We expect that most employers will include the Notice as part of their annual open enrollment materials. We suggest that employers also provide a copy of the Notice with the initial enrollment materials presented to new hires.

The Notice may be provided by first-class mail. It may be sent as an attachment to an email to an employee if:

- The email apprises the employee of the importance of the Notice, (e.g., "the attached Notice describes how certain employees who are unable to afford to pay employee premiums required under the plan for coverage may be able to obtain financial assistance from state premium assistance programs");
- The employee has the ability to effectively access documents furnished in electronic form at any location where the employee is reasonably expected to perform his or her duties as an employee;
- Access to the employer's electronic information system is an integral part of the employee's duties; and
- The email informs the employee that upon request the employee will be furnished a paper version of the Notice.

### When Must Employers Provide the Notice?

Employers must provide the Notice annually. The first Notice is required to be provided by the first day of the first plan year beginning after February 4, 2010, but no earlier than May 1, 2010.

- Such materials are provided no later than the date determined below;

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## DOL Issues Model CHIPRA Notice Regarding Premium Assistance (cont'd.)

Accordingly, for plan years beginning from February 5, 2010, through April 30, 2010, the Notice must be provided by May 1, 2010. For employers whose next plan year begins on or after May 1, 2010, the Notice must be provided by the first day of the next plan year (January 1, 2011 for calendar year plans).

### What Other Actions Must Employers Take?

Employers already must provide a special enrollment period for employees becoming eligible for premium assistance or losing coverage under Medicaid or CHIP. Additionally, employers will have to determine whether to accept premium assistance payments directly from the states or have their employees receive the payment. States are also developing information requests for employers to obtain information about the type and level of benefits under the employers' benefit plans, and will be sending more specifics about these information requests in the near future.

If you have any questions regarding this new Notice or the enrollment requirements, please contact the Locke Lord employee benefit attorney you regularly work with, or any of the authors.

### About the Authors

Laurence A. Hansen is a partner at Locke Lord. He has more than 25 years of experience in the area of taxation, with emphasis on employee benefits and executive compensation. He has represented national clients in many complex corporate and employee benefits transactions, including plan mergers and terminations.

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