



U.S. Department of Justice

Justice Management Division

Human Resources

Washington, D.C. 20530

APR 13 2009

MEMORANDUM FOR COMPONENT HUMAN RESOURCES OFFICERS

FROM: Rod Markham
Director, Human Resources

SUBJECT: The American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (ARRA) provides for premium reductions and additional election opportunities for Temporary Continuation of Coverage (TCC) for employees involuntarily terminated between September 1, 2008, and December 31, 2009. The premium assistance is 65 percent of the health insurance premium for up to nine months, or until they become eligible for other group coverage, Medicare, or their 18-month TCC period ends, whichever is first. Components must notify individuals of their premium assistance eligibility by April 18, 2009.

The Office of Personnel Management (OPM) issued Benefits Administration Letter (BAL) 09-202 that included model notices, an application/certification form used by the former employee, and ARRA-TCC premiums. You may access the BAL at the following site: <http://www.opm.gov/retire/pubs/bals/bal09.asp#202>. The Human Resources Systems and Analysis Group (HRSAG) provided FOCUS reports based on the Nature of Action Codes (NOAC) provided by OPM. The FOCUS reports contain the NOAC, the individual's name, separation date, and last known address. The individuals listed in the reports had health insurance coverage prior to their involuntary separation. The National Finance Center (NFC) prepared a report identifying former employees' TCC status. We attached HRSAG's and NFC's reports for your convenience. Your benefits specialists received this information by electronic mail.

During a meeting held on March 12, 2009, OPM provided the following Nature of Action Codes that agencies are to use to identify the affected individuals: 351, 352, 353, 356, 357, and 358. OPM would not commit itself whether NOAC 312 (Resignation in lieu of) or NOAC 330 (Removal) is eligible. In the Internal Revenue Service (IRS) Notice 2009-27, found at <http://www.irs.gov/pub/irs-drop/n-09-27.pdf>, IRS defines involuntary termination as

[A] severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services. An involuntary termination may include the employer's failure to renew a contract at the time the contract expires, if the employee was willing and able to

execute a new contract providing terms and conditions similar to those in the expiring contract and to continue providing the services. In addition, an employee-initiated termination from employment constitutes an involuntary termination from employment for purposes of the premium reduction if the termination from employment constitutes a termination for good reason due to employer action that causes a material negative change in the employment relationship for the employee.

Based on the information in the IRS Notice, several other separation actions, not previously discussed by OPM, could qualify as involuntary termination for premium assistance under ARRA, such as:

- 300 Retirement – Mandatory
- 302 Retirement with 825 Separation Incentive (if a certain number of remaining employees in the employee's group will be terminated after the offer period)
- 303 Retirement-Special Option (VERA) (if a certain number of remaining employees in the employee's group will be terminated after the offer period)
- 304 Retirement ILIA (except for separation based on gross misconduct)
- 312 Resignation ILIA (except for separation based on gross misconduct)
- 317 Resignation with 825 Separation Incentive - (if a certain number of remaining employees in the employee's group will be terminated after the offer period)
- 330 Removal (except for separation based on gross misconduct)

Several agencies contacted OPM requesting clarification of the IRS definition and the above NOACs. If we do not hear from OPM, the Department intends to determine involuntary termination based on our interpretation of the IRS guidance, and use great latitude in determining eligibility.

We are waiting for more information from OPM concerning how payroll offices receive the 65 percent premium from the agencies. When we have this information, we will advise your offices.

Please contact Ms. Jamie Higgins, HR Policy and Advisory Services, for additional information. Her phone number is (202) 514-5781, and electronic mail address is Jamie.A.Higgins@usdoj.gov.

Attachments