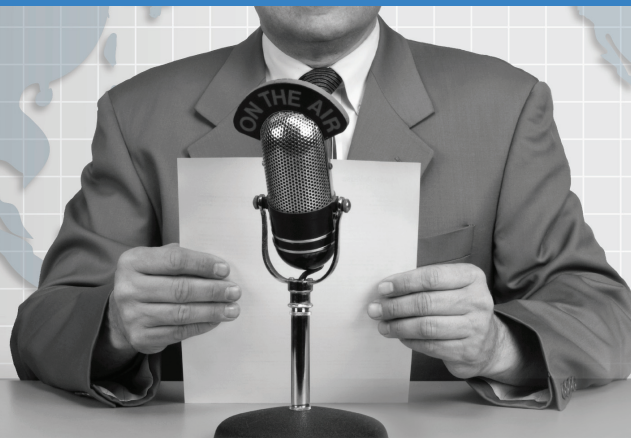


# Employee Benefits Broadcast



Foley is pleased to provide you with a brief summary of the April 21, 2009 installment of the Employee Benefits Broadcast Web conference series.

In **Headline News**, Partner Samuel F. Hoffman discussed updates to the Consolidated Omnibus Reconciliation Act (COBRA) subsidy rules.

Highlights of the discussion are:

- The Internal Revenue Service (IRS) and U.S. Department of Labor (DOL) are applying a very broad definition of “involuntary termination of employment” to the new COBRA subsidy rules
- Remember that the 35-percent premium payment cannot be paid on a pre-tax basis, but it is okay for employers to give terminated employees taxable payments equal to all or a portion of the COBRA subsidy (other than as a direct reimbursement)
- Note that Assistance Eligible Individuals (AEIs) may become AEIs more than once, and that the nine-month subsidy period is measured from each involuntary termination
- Determine which of the three new notices are required to go to qualified beneficiaries and AEIs in your plan

If you would like a more comprehensive analysis of the COBRA subsidy rules, please see the March 2009 special edition of the Employee Benefits Broadcast at [Foley.com/EBB](http://Foley.com/EBB).

Associate Katherine L. Aizawa’s first **Cram Session** covered the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA) Special Enrollment Rights. The key points are:

- Determine if your plan is subject to the new CHIPRA special enrollment rights

- Note that individuals subject to CHIPRA special enrollment rights have a longer period to enroll in the employer’s plan (60 days) than is provided under HIPAA (30 days)
- Ensure that your plan timely: (1) complies with the CHIPRA notice requirement, (2) updates its Notice of HIPAA Special Enrollment Rights, and (3) updates its plan document and summary plan description to reflect the new law
- Although plans are not required to distribute notices until the first day of the first plan year beginning on or after March 1, 2010, you may distribute notices now if you would like to give your employees notice of these new rules

In **From the Case Files**, Partner Greg W. Renz discussed the U.S. Supreme Court’s decision in *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*. Highlights of the discussion are:

- Determine whether your Employee Retirement Income Security Act (ERISA) plans invalidate a beneficiary designation of an ex-spouse on the date of a divorce. If not, consider adding this provision to your plans in order to avoid the risk of litigation.
- In the event of a beneficiary dispute, consider using an interpleader action to avoid the risk of double payment by the plan and/or plan sponsor.
- Determine whether your plans accept disclaimers.

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Associate Katherine L. Aizawa's second **Cram Session** addressed the Heroes Earnings Assistance and Relief Tax (HEART) Act's provisions for qualified retirement plans.

- Note that employees who are on leave for more than 30 days must be treated as terminated for purposes of allowing in-service distributions of pre-tax contributions
- Another mandatory provision of the HEART Act requires that employees who die while on military leave be treated as if they were employed on the date of death
- Determine whether your plan would like to implement any of the optional provisions of the HEART Act

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## About the Employee Benefits Broadcast

The Employee Benefits Broadcast provides participants with needed information in the most efficient manner possible — only a telephone line and Internet access are required to participate — allowing employee benefits professionals to stay up-to-date with timely information from anywhere in the nation.

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For more information, please visit [Foley.com/EBB](http://Foley.com/EBB) or contact Elie Harris at [eharris@foley.com](mailto:eharris@foley.com).

