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## Labor & Employment Department

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## LABOR & EMPLOYMENT NEWS

### Post Katrina & Rita

A Newsletter for Business Professionals

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#### COBRA

The Consolidated Omnibus Budget Reconciliation Act (COBRA) permits qualified beneficiaries who lost coverage under a group health plan to elect continuation health coverage. The COBRA continuation coverage provisions generally provide a qualified beneficiary a period of at least 60 days to elect COBRA continuation coverage under a group health plan. Plans are required to allow payers to pay premiums in monthly installments and plans cannot require payment of premiums before 45 days after the day of the initial COBRA election. Under COBRA rules, a premium is considered paid timely if it is made not later than 30 days after the first day in the period for which payment is being made. Notice provisions prescribe time periods for individuals to notify the plan of a qualifying event or determination of disability and for plans to notify qualified beneficiaries of their rights to elect COBRA continuation coverage. The agencies are extending these time frames for plans that cannot make their disclosures on time due to the hurricane.

With respect to plan participants, beneficiaries, qualified beneficiaries, or claimants directly affected by Hurricane Katrina, group health plans, disability and other welfare plans, pension plans, and health insurance issuers subject to part 7 of ERISA, the period from August 29, 2005 through January 3, 2006 must be disregarded when determining the 60-day period to elect COBRA continuation coverage under ERISA section 605 and Code section 4980B(f)(5) and the date for making COBRA premium payments pursuant to ERISA section 602(2)(C) and (3) and Code section 4980B(f)(2)(B)(iii) and (C).

With respect to group health plans, their sponsors and administrators, and health insurance issuers subject to part 7 of ERISA that are directly affected by Hurricane Katrina, the period from August 29, 2005 through January 3, 2006 shall be disregarded when determining the date for providing a COBRA election notice under ERISA section 606 and Code section 4980(B)(f)(6).

So, for participants, beneficiaries, and plans in the disaster areas (the counties and parishes in Louisiana, Mississippi, or Alabama that have been or are later designated as disaster areas eligible for Individual Assistance by the Federal Emergency Management Agency because of the devastation caused by Hurricane Katrina), the time frames for the above provisions are tolled for the period between August 29, 2005 and January 3, 2006. The effect is to freeze the application of the time periods through January 3, 2006.

## **Department of Labor: Disaster Unemployment Assistance (DUA)**

DUA provides financial assistance to individuals whose employment or self-employment has been lost or interrupted as a direct result of a major disaster declared by the President of the United States. Before an individual can be determined eligible for Disaster Unemployment Assistance, it must be established that the individual is not eligible for regular employment insurance benefits (under any state or federal law). The program is administered by the states as agents of the federal government.

DUA is available to unemployed U.S. nationals and qualified aliens who worked or were self-employed if they:

- worked or were self-employed in or were scheduled to begin work or self-employment in an area declared as a federal disaster area.
- can no longer work or perform services because of physical damage or destruction to the place of employment as a direct result of the disaster.
- establish that the work or self-employment they can no longer perform was their primary source of income.
- do not qualify for regular unemployment insurance benefits from any state.
- cannot perform work or self-employment because of an injury or because they were incapacitated as a direct result of the disaster.
- became the breadwinner or major support of a household because of the death of the head of the household.
- cannot work or perform self-employment due to closure of a facility by the federal government.
- lose a majority of income or revenue because the employer or self-employed business was damaged destroyed, or closed by the federal government.

Suffering a monetary loss due to damage of property or crops does not automatically entitle an individual to DUA.

DUA is available to individuals for weeks of unemployment beginning after the date the major disaster began and for up to 26 weeks after the major disaster was declared by the President, as long as their unemployment continues to be a result of the major disaster. The maximum weekly amount is determined according to the state law for unemployment insurance in the state where the disaster occurred. Claims should be filed in accordance with the state's instructions published in announcements about the availability of DUA. One can also contact the State Unemployment Insurance agency.

### **The Davis-Bacon Act**

The Davis-Bacon Act, passed in 1931 during the Great Depression, sets a minimum pay scale for workers on federal contracts (e.g., federal construction projects such as highway and bridges) by requiring contractors to pay the prevailing or average pay in the region. By executive order, President Bush has suspended in certain areas affected by Hurricane Katrina the requirement that workers be paid at least the prevailing wages in these areas.

### **The Equal Employment Opportunity Commission**

Due to the devastation caused by Hurricane Katrina, the EEOC's New Orleans District Office at 701 Loyola Avenue is closed and will remain so until further notice. Individuals who believe that they may have experienced employment discrimination in the state of Louisiana during the last three hundred days and have not yet filed a charge of discrimination should contact the EEOC's National Contact Center at 1-800-669-4000.

Parties who have already made charges are advised that investigations and determinations regarding open charges of discrimination filed with the EEOC's New Orleans District Office are suspended until further notice.

Respondents (employers, labor organizations, and employment agencies) to open charges of discrimination filed with the New Orleans District Office may have been requested to supply information (e.g., data, witness statement, affidavits, attendance records, etc.) by an impending due date. A blanket extension for submission of any and all documents is granted until further notice. An update will be posted at [www.eeoc.gov/katrina/stakeholders.html](http://www.eeoc.gov/katrina/stakeholders.html). All inquiries regarding New Orleans litigation should be directed to the Houston District Office at (713) 209-3392.

Federal complainants and agencies with cases pending before the EEOC's New Orleans District Office are advised that all mediations, settlement conferences and hearings are postponed until further notice, as are deadlines for motions, submissions of investigative files, and general correspondence. The administrative judge or mediator responsible for a case will contact the parties when the office reopens. Similarly, individuals wishing to request hearings before administrative judges are advised that deadlines are postponed until further notice.

This newsletter is a periodic publication of **Milling Benson Woodward L.L.P.** and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. For further information about these contents or any other legal matter, please contact our Labor Department at 225.382.2113.