

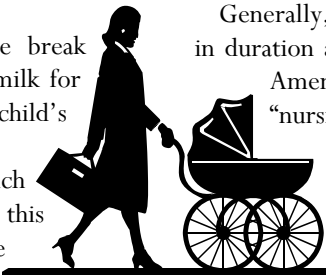
## Nursing mothers gain protection under Healthcare Reform

by Mark P.A. Hudson

In a seemingly unnoticed section of the recent Health Reform Legislation, the Fair Labor Standards Act (“FLSA”) was amended to require employers to provide rest, breaks and space for employees who are nursing mothers to express breast milk. Consequently, all FLSA-covered employers gained two additional obligations:

- (1) An employer must permit a “reasonable break time” for an employee to express breast milk for her nursing child for the first year of the child’s life.

These breaks must be given “each time such employee needs to express the milk.” At this juncture, the new law did not define “reasonable break time” nor did it identify the number of breaks that must be given in any workday. Instead, the number and duration of the break appears to be dictated by the amount of time and frequency the mother claims to need to express the milk. Furthermore, because mothers will likely need time not only to express the milk but also to sanitize and store the equipment, breaks could last between 15 and 30 minutes or more depending upon on the location of the break room and necessary facilities.



- (2) The employer must provide a private location other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public.

For a large employer, this may require multiple private locations to accommodate several employees, or alternatively, scheduling may be necessary.

Generally, under the FLSA, breaks of less than 30 minutes in duration are compensable; however, the Nursing Mother Amendment provides that these new mandatory “nursing/expressing breaks” are unpaid. For some companies, this may result in different treatment. For example, a smoking break may be compensable, whereas a nursing break may not.

The mandatory break requirement applies to all employers covered by the FLSA unless the employer can show that it employs fewer than 50 employees and that the requirement would impose an undue burden causing the employer “significant difficulty or expense when considered in relation to size, financial resource, nature and stature of the employer’s business.”

For more information, please contact Mark Hudson at 319-365-9461 or [mph@shuttleworthlaw.com](mailto:mph@shuttleworthlaw.com). ♦

## Iowa adopts Mini-WARN Act

by Mark P.A. Hudson [mph@shuttleworthlaw.com](mailto:mph@shuttleworthlaw.com)

On March 22, 2010, Governor Culver signed into law the Iowa Worker Adjustment and Retrain Notification Act (the “Iowa WARN Act”), becoming effective July 1, 2010. Similar to federal law, the Iowa law originally introduced last year requires employers to provide advance notice of business closings and mass layoffs.

### Does the Iowa WARN Act Cover My Business?

The Iowa WARN Act applies to any person who employs twenty-five (25) employees, excluding part-time

employees (i.e., averaging fewer than 20 hours) and those employees who have been employed for fewer than 6 out of the 12 preceding months from the date of the required notice. Unlike its federal counterpart which covers “plant closings,” Iowa’s Act covers only “business closings” and “mass layoffs.”

### Business Closing

“Business closing” means the permanent or temporary shutdown of a single site of employment of one or more facilities or operating units that will result in an employment loss for twenty-five (25).

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### Mass Layoff

“Mass layoff” means a reduction in employment force that is not the result of a business closing and results in an employment loss at a single site of employment during any thirty-day (30) period of twenty-five (25) or more employees, other than part-time employees.

### Required Notice

Covered employers must provide at least 30 days’ written notice prior to the effective date of any mass layoff or business closing.

### Notice Contents

Employer notices must go to the employee (or their representative) and to the Iowa Workforce Development (“IWD”) in written form containing the following topics:

1. The name and address of the employment site where the business closing or mass layoff will occur, and the name and telephone number of a company official to contact for further information.
2. A statement as to whether the planned action is expected

to be permanent or temporary and, if the entire business is to be closed, a statement to that effect.

3. The expected date of the first employment loss and the anticipated schedule for employment losses.
4. The job titles of positions to be affected and the names of the employees currently holding the affected jobs. The notice to the department shall also include the addresses of the affected employees. The department shall maintain the confidentiality of the names and addresses of employees received by the department.

### Enforcement and Penalties

The IWD is responsible for the investigation and enforcement of the Iowa WARN Act. A covered employer who violates these notice requirements are subject to a civil penalty of up to \$100 for each day of the violation.

### Bottom Line

Employers facing these tough decisions should verify compliance with these new requirements as the penalties can be extensive. ♦

## Federal contractors: OFCCP letters are coming

by Mark P.A. Hudson

The OFCCP has sent another round of Corporate Scheduling Announcement Letters (“CSALs”) for 2010. These CSALs letters alert contractors to which their locations are stated for audits during FY2010.

### How Do I Know If I have Affirmative Action Program Obligations?

Employers are required to create and implement an Affirmative Action Program (“AAP”) if:

- (1) the employer employs 50 or more employees and has federal contracts of at least \$50,000,
- (2) the entity serves as a depository of government in any amount; or
- (3) the entity acts as an issuing and paying agent for U.S. Savings Bonds and Notes.

Beyond affirmative action programs, all federal contracts and subcontracts are covered under Executive Order 11246 unless specifically exempted. EO 11246 contains various obligations to a lesser extent than the more extensive AAP requirements.

### What You Should Do Now?

Human resource professionals and in-house counsel should make sure the appropriate individuals know of the potential letters from the OFCCP or U.S. Department of Labor so they can make sure to focus their resources. As always, it is important to make sure that you are fulfilling your affirmative action program obligations **prior** to the OFCCP compliance audits. Employers should pay particular attention to

disparities and pay on adverse impact issues.

Moreover, in recent months, the OFCCP has given heightened scrutiny to disabled veteran’s issues as employers should document their outreach and recruitment efforts to this group of potential applicants. For example, during an audit, the OFCCP will typically review information such as:

- Relationships and partnerships with local, state, federal and veteran disability organizations.
- Establishment of relationship with state workforce agency job banks and the Department of Vocational Rehabilitation Services for job posting purposes.
- Tracking of the number of veterans and individuals with disabilities hired during certain periods.
- Recruitment efforts at educational institutions targeted towards applicants for veterans and/or individuals with disabilities.
- Recruitment efforts through job advertisements in the local community targeting specific categories such as veterans and individuals with disabilities.
- Number of on-the-job training opportunities for covered individuals, covered veterans and employees with disabilities.

These audits can be intrusive and time-consuming. Furthermore, the OFCCP investigators will also review: (1) whether workplaces are accessible for individuals with disabilities structurally or electronically; (2) whether

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***Note: Fulfill your  
AAP obligation  
prior to the OFCCP  
compliance audit.***

## *(Cont. from Page 2)* . . . **Federal contractors**

contractors conduct termination processes consistently; (3) handle FMLA, short-term disability and APA inquires properly; and (4) whether contractors collect and process Form I-9's in accordance with federal law. For American Recovery and Reinvestment Act ("ARRA") contracts, we have heard word that the OFCCP may conduct audits on up to 20% of the ARRA contractors. Importantly, in the Midwest area, each ARRA audit will require an onsite visit.

In all, the OFCCP has taken a comprehensive approach to reviewing all documentation and reviewing multiple areas to ensure proper compliance with such programs. Employees must be proactive to ensure compliance now before the OFCCP spends two days at your workplace. Please contact Mark Hudson ([mph@shuttleworthlaw.com](mailto:mph@shuttleworthlaw.com)) to discuss any of these topics. ♦

## **New COBRA notice requirements**

by Terri C. Davis [tcd@shuttleworthlaw.com](mailto:tcd@shuttleworthlaw.com)



On March 16, 2010, the U.S. Department of Labor issued new COBRA model notices to help employers implement the requirements in the ARRA (American Recovery and Reinvestment Act), and the Continuing Extension Act of 2010 (CEA) that plans notify certain current and former participants and beneficiaries about the premium reduction available.

- The new Model General Notice can be used on a prospective basis for all qualifying events and all qualified beneficiaries. It includes information about the new May 31, 2010 premium assistance eligibility deadline included in Continuing Extension Act of 2010 ("CEA") which extended the March 31, 2010 deadline in Temporary Extension Act ("TEA"). It also includes a summary of the COBRA premium assistance law under ARRA as amended by the 2010 Department of Defense Appropriations Act and TEA and a revised Request for Treatment as an Assistance Eligible Individual form.

This new Model General Notice may be sent to qualified individual beneficiaries who have experienced any qualifying event any time between September 1, 2008 and May 31, 2010, and who have not yet received a COBRA election notice.

- The New Model Notice of New Election Period issued by the Department is for individuals who had a reduction of hours followed by a termination of employment and who do not currently have COBRA. The TEA extends the COBRA premium subsidy to certain individuals who lost coverage because of a reduction of hours. Such individuals must be notified of their new rights, including the right to reinstate or re-elect COBRA. Notice must be sent to individuals who experienced reduction in hours of employment any time between September 1, 2008 and May 31, 2010; and experienced an involuntary termination of employment at any point between March 2, 2010 and May 31, 2010; and either did not elect COBRA when it was first offered or who elected by subsequently discontinued COBRA.

The new Model Notice of New Election Period must be given to those who experience an involuntary termination after a reduction of hours within 60 days of termination of employment. This Notice is generally the same as the General Model Notice, but includes the following additional information:

- Eligibility requirements for the new election period and premium assistance (Note: if COBRA is reinstated, no pre-existing exclusion may be applied)
  - How the COBRA eligibility period is measured (i.e., the maximum coverage period is measured from the date of the reduction of hours or loss of coverage relating to the reduction of hours, as applicable, not the date of the involuntary termination.)
  - How the premium assistance period is measured (i.e., from the first COBRA coverage period that follows the involuntary termination)
- The new Model Supplemental Information Notice is for individuals who currently have COBRA but who were not notified of their rights under TEA and CEA. This model Notice provides information about TEA's and CEA's extensions and expansions of the premium reduction. This notice must be sent within 60 days of termination of employment to individuals who elected and maintain COBRA coverage because of a termination of employment that occurred on or after March 1, 2010 through April 14, 2010 but did not receive a notice describing the ARRA premium assistance. This notice must be provided before the end of the required time period for providing a COBRA election notice (i.e., generally within 60 days of the termination of employment or the date coverage was lost because of a termination of employment). This notice also must be sent to individuals who became eligible for COBRA because of a reduction in hours of employment between September 1, 2008 and May 31, 2010, and subsequently were involuntarily terminated on or after March 2, 2010 and before May 31, 2010.
  - The new Model Notice of Extended Election Period is for individuals who currently do not have COBRA and who

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## (Cont. from Page 3) . . . COBRA notice

were not notified of their rights under TEA and CEA. This notice relates to individuals who were terminated on or after April 1, 2010 and who received a COBRA notice that did not address the changes under TEA and CEA. It must be sent to all individuals who experienced a qualifying event on or after April 1, 2010, we provided notice that did not inform them of their rights under ARRA (As amended by TEA and CEA), and either did not elect COBRA at

that time or elected it but subsequently discontinued the coverage.

This notice is required to be provided within the original period during which the employer is required to provide a COBRA election notice. The notice provides for a new 60-day election period measured from the date of the new notice, if the individual's qualifying event was the employee's involuntary termination. ♦

## Healthcare Reform tidbits

by Tricia Hoffman-Simanek

**Preexisting Conditions.** A group health plan and a health insurance issuer offering group or individual health insurance coverage may not impose any pre-existing conditions exclusions on those persons under 19 years of age. This rule takes effect for plan years beginning September 23, 2010. The law will apply to all individuals for any plan years that begin on or after January 1, 2014.

**Adult Children Coverage.** Effective September 23, 2010, health plans (either individual or group policies) must provide dependent coverage for children up to the age of 26.

**Health Status Discrimination.** Starting in 2014, discrimination against individual participants and beneficiaries based on health status will be prohibited. A group health plan and a health insurance issuer may not establish rules for eligibility of any individual to enroll under the plan

based on health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability, disability or any other health status-related factor to be determined by the Secretary.

The Secretary is also to establish criteria for determining whether health insurance issuers and employment-based health plans have discouraged an individual from remaining enrolled in prior coverage. Sanctions will be issued for any person encouraged by the issuer to dis-enroll from those health benefits to enroll in the pool coverage.

If you have specific questions on how the health reform law affects your company or you or want further information, please contact the SI Health Reform Workgroup: [phs@shuttleworthlaw.com](mailto:phs@shuttleworthlaw.com). ♦

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## Immigration enforcement by ICE increases

by Mark P.A. Hudson

In April of 2009, Secretary of the United States Department of Homeland Security announced new guidelines for worksite enforcement directing the U.S. Immigration and Customs Enforcement ("ICE") to shift its focus and resources to investigate and prosecute employers who knowingly employ undocumented workers in violation of the U.S. immigration laws. "ICE is focused on finding and penalizing employers who

believe they can unfairly get ahead by cultivating illegal work places," said Assistant Secretary Morton. "We are increasing criminal and civil enforcement of immigration – related employment laws and imposing smart, tough employer sanctions to even the playing field for employers who play by the rules." These audits will include a comprehensive review of Form I-9.

**How can we help?** Shuttleworth & Ingersoll regularly assists employers on Form I-9 compliance. We perform

private audits of Form I-9 documents, prepare compliance programs, and train managers and workers in implementing these programs. We help employers decide whether and how to create or store Form I-9's electronically, to use social security administration's number verification systems, or to participate in the Department of Homeland Security's E-Verify program. ♦

