

March 3, 2009

New Stimulus Law Creates COBRA Subsidies and Requires
New Employer Notices to Former Employees

The Stimulus Package that President Obama signed into law on February 17, 2009, requires employers to send out new COBRA notices to certain former employees. The new law provides COBRA (health insurance continuation coverage) subsidies and special election rights to individuals who have lost or will lose group health plan coverage due to an involuntary termination of employment between September 1, 2008, and December 31, 2009. The subsidies are available effective March 1, 2009. Employers must notify affected individuals by April 13, 2009.

This temporary COBRA subsidy is available to former employees or their dependents who lose coverage under a group health plan during the applicable period as a result of involuntary termination of employment *and* who elect COBRA continuation coverage either during the original COBRA election period or during the special election period created by the new law.

Under the new subsidized coverage, the individual will pay no more than 35% of the applicable COBRA premium for up to nine months. The employer must provide the remaining 65% of the premium, but is entitled to an equal credit toward payroll taxes. For March and April 2009, if the individual pays more than 35% of the applicable COBRA premium, the employer may either reimburse the individual within 60 days for the overpayment or credit the overpayment toward the individual's future COBRA payments.

A former employee who did not elect COBRA during the original election period will now have a second chance to elect COBRA coverage. Generally, an individual who elects COBRA coverage during this special election period will have COBRA coverage commence on March 1, 2009. The period of coverage will still be measured from the individual's original qualifying event. For example, if an individual was laid off in September 2008, and lost his coverage at the end of September, then his 18 month period of COBRA continuation coverage will still end on March 31, 2010. The subsidized coverage would run from March 1, 2009, through November 30, 2009, unless coverage ends sooner in accordance with the normal COBRA rules.

The employer must notify individuals of these new COBRA rights no later than April 13, 2009, using one of two different notices. One notice must be provided to all individuals currently on COBRA continuation coverage as of March 1, 2009. The other notice must be provided to all individuals who either declined COBRA when it was initially offered or who elected but subsequently terminated COBRA coverage before March 1, 2009. The Department of Labor will issue model notices for employers to use within the next couple of weeks.

Employers should begin compiling a list of all employees who have been involuntarily terminated other than for gross misconduct since September 1, 2008, and dividing that list between those currently enrolled in COBRA continuation coverage and those who are not. Please note that an employer can face significant penalties for noncompliance. Therefore, it is imperative that employers who are subject to COBRA send out these new notices and provide the required subsidies.

If you have any questions on this issue or any other labor or employment law matter, please contact me or Peter Bennett.

Sincerely,

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