



Employee Benefits ALERT

FEBRUARY 20, 2009

COBRA Subsidy in New Stimulus Law Adds Administrative and Notice Requirements for Employers

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA). This new law includes provisions for a nine-month subsidy of COBRA premiums for employees who are involuntarily terminated. The law also imposes additional administrative and notice requirements on employers that require immediate attention.

The COBRA Subsidy

ARRA provides that beginning March 1, 2009, the federal government will subsidize 65% of the COBRA premium for an "assistance eligible individual," provided that individual pays the remaining 35% of the COBRA premium. The 65% portion will be reimbursed by means of a payroll tax credit to the employer, or in the case of an insured plan subject to state continuation coverage laws, but not COBRA, the insurer. The Secretary of the Treasury will issue guidance on how a claim for the tax credit is to be filed.

Assistance Eligible Individual

An "assistance eligible individual" is any person who becomes eligible for COBRA between September 1, 2008, and December 31, 2009, due to the employee's involuntary termination of employment. However, the full subsidy is not available for individuals with adjusted gross income that exceeds \$250,000 (for joint filers) or \$125,000 (for all other filers). Any portion of the subsidy that an individual receives but is not eligible for will need to be reported on the individual's annual income tax return. As a result, employers will not need to determine whether an individual's income makes him ineligible for the subsidy.

Special Election Notice to Previously Terminated Employees

ARRA requires that any individual who would have qualified for the subsidy except that they did not elect COBRA as of February 17, 2009, must be provided a 60-day period to elect the subsidized COBRA continuation coverage. Consequently, employers must send a notice to such individuals informing them of their election rights. If

the individual elects coverage, coverage would begin March 1, 2009.

Electing a Different Coverage Option

The new law provides that an employer may, but is not required, to allow an individual who is eligible for COBRA premium assistance to change his health insurance coverage option when making a COBRA election under the employer's plan.

Notice Requirements

ARRA requires plan administrators to modify COBRA election notices to describe the new premium subsidy. The Departments of Labor, Treasury and Health and Human Services will develop a model notice for this purpose within 30 days of the enactment of the new law.

Action Items

While we certainly hope that additional guidance will be forthcoming from the government regarding the implications of the new law, the following are some suggested initial steps that should be undertaken by employers:

- Compile a listing of all assistance eligible individuals who must be notified of the availability of COBRA with the subsidy.
- Update COBRA forms and notices or contact your third party administrators to ensure compliance with the new law.
- Revise COBRA billing systems.
- Have your payroll department or vendor prepared to be able to claim the payroll tax credit to recoup the COBRA premium subsidy.
- Review severance plans and arrangements to determine how they will be affected by ARRA.

For additional information, please contact **John Papahronis**, **Jim Prince**, **Bill Freudenrich** or any of our Employee Benefits attorneys (*listed on the reverse side*).

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