

CLIENT ALERT

FEBRUARY 2009

Cobra Amendments Under The American Recovery And Reinvestment Act Of 2009

The American Recovery and Reinvestment Act of 2009 (“the Act”), recently signed into law by President Obama, contains provisions regarding COBRA benefits that require prompt attention on the part of employers and health plan administrators. Below is a summary of some of the more significant provisions of the Act affecting COBRA continuation coverage.

Primarily, the Act establishes a 65% subsidy of COBRA premiums for certain individuals. Under the new law, an employee who is otherwise a qualified beneficiary of COBRA coverage and who is (or was) involuntarily terminated between September 1, 2008 and December 31, 2009 is eligible for the premium relief. These eligible individuals will be treated as having paid their COBRA premiums in full if they pay 35% of the premium amount. The entity to which the premiums are payable will be reimbursed for the remaining 65% through a tax credit applied against its payroll tax assessments. Should the entity’s subsidy amount be greater than its payroll tax liability, the excess amount will be treated as an overpayment of taxes and either refunded or credited. Depending on the type of health plan involved, the entity entitled to reimbursement could be a multiemployer group health plan, a single employer maintaining a group health plan, or an insurer providing coverage under a group health plan.

The subsidy takes effect in most cases as of March 1, 2009. Eligible individuals can receive this relief for a maximum period of nine months, but the entitlement will end sooner should the person become eligible to enroll in another health plan. The eligible individual must promptly notify his or her plan if he or she becomes ineligible for the subsidy. Failure to do so

could result in a penalty amounting to 110% of the subsidy amount. The subsidy is phased out or eliminated for “high-income individuals” (those with adjusted gross income exceeding \$125,000 or \$250,000 for joint filers). Subsidies received by these individuals will be recaptured through an income tax increase in the amount of the subsidy assistance received.

The subsidy is available only prospectively. That is, individuals who were terminated after August 2008 but before the effective date of the act (February 17, 2009) and elected COBRA continuation coverage, are eligible for the subsidy only as of the next coverage period following the date of the Act, in most cases March 1, 2009. Additionally, otherwise eligible individuals who were terminated after August of last year can benefit from the subsidy even if they did not elect COBRA coverage at the time of their termination. If these individuals were otherwise eligible as of February 17, 2009, they must be given another opportunity to elect COBRA continuation coverage.

This provision, and others, imposes new notice requirements on plan administrators. Under the new law, the requirements for notice to employees who become eligible for COBRA continuation coverage will not be considered to have been met unless the notice advises the recipient of (1) the availability of the premium reduction, and (2) the option to enroll in different coverage if this option is permitted by the employer. This may be accomplished either by amending existing notice forms or by including a separate document with the otherwise-required notice. Certain elements, such as necessary forms, contact information, and a description of rights and obligations must be included in the notice and, in the case of individuals who became eligible for COBRA coverage before February 17, 2009, the additional notice must be provided by April 18, 2009. The Secretaries of Labor, Treasury, and Health and Human Services are required to promulgate model notices by March 19, 2009.

If you would like to speak to someone about these or other aspects of the COBRA assistance plan, please contact Diane DeGiacomo, Chair of our Employment Law Group.

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