

Employment Practice Update

Keeping You Informed About Employment Matters

May 22, 2009



New Cobra Rules

Updates are part of the American Recovery and Reinvestment Act of 2009

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The American Recovery and Reinvestment Act of 2009 (“ARRA”) was enacted to help workers maintain group health insurance coverage for themselves and their families after losing their jobs. ARRA provides for 65% premium reductions and additional election opportunities for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”). ARRA requires employers to comply with strict notice requirements and to advance the subsidized payments for qualified individuals electing such coverage. ARRA then permits employers to obtain a reimbursement for the advanced funds via a credit on employment taxes. The subsidy (or premium reduction) applies to periods of health coverage beginning on or after February 17, 2009 and lasts for up to nine months. It is for those eligible for COBRA during the period beginning September 1, 2008 and ending December 31, 2009 due to an involuntary termination of employment that occurred during that period (referred to as “assistance eligible individuals”). In early April, the Internal Revenue Service issued a twenty-seven page guidance which, among other things, addresses when a worker’s departure is “involuntary.”

ARRA also implements new notice requirements. Plan administrators are required to provide notices of the subsidies to all employees and dependents covered by the group

This article is meant to provide a brief overview and points of discussion regarding employment law topics. Should a particular issue arise or should you desire additional consultation to protect your firm, the advice of a competent counsel should be sought.

health plan (excluding flexible spending accounts) who have a COBRA-qualifying event during the periods from September 1, 2008 through December 31, 2009, regardless of the reason for the qualifying event and regardless of whether the individual previously declined COBRA or failed to make COBRA payments. The plan administrator then reviews the elections to determine whether the individual is an assistance eligible individual.

The United States Department of Labor (“DOL”) has posted model notice packages at www.dol.gov/ebsa. These packages include (1) a general explanation of COBRA rights as modified by the new subsidy rules, (2) a summary of the COBRA subsidy provisions, and (3) an application for the subsidy. There are three employer notices for different situations: (1) The General Notice is the typical initial notice containing all of the information required of a COBRA notice. (2) The Abbreviated General Notice is for those currently enrolled in COBRA, but who have not yet received notice of their additional rights under ARRA, and thus, lacks COBRA election information. It may be sent in lieu of the full version to individuals who experienced a qualifying event on or after September 1, 2008, have already elected COBRA coverage, and still have it. (3) The Notice of Extended Election Period should be sent to any assistance eligible individual (or any individual who would be an assistance eligible individual if a COBRA continuation election were in effect) who: (a) Had a qualifying event at any time from September 1, 2008 through February 16, 2009; and (b) Either did not elect COBRA continuation coverage, or who elected it but subsequently discontinued COBRA.

Notices are available in English and Spanish. Employers need to modify these Model Notices to accurately reflect the employer’s particular plan. Issues the employer would want to reference include any prohibition against employees opting for a different employer-offered plan, a special notation limiting applicability for plans including domestic partners, and an explanation of the implications of any pre-existing employer subsidies. Finally, employers must immediately revise or supplement their COBRA documents/summary plan descriptions so that the notices and plans are consistent.

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