

## **COBRA CONTINUATION COVERAGE; NEW ECONOMIC STIMULUS PACKAGE EXPANDS EMPLOYER OBLIGATIONS**

### **INTRODUCTION**

On February 17, 2009, President Obama signed into law H.R. 1, “American Recovery and Reinvestment Act of 2009” (the “Stimulus Bill”). This legislation includes provisions affecting the continuation of health insurance coverage (“continuation coverage”) covered employers must make available to certain former employees and their families under provisions of the “Consolidated Omnibus Budget Reconciliation Act of 1985” (“COBRA”).

The following is a basic outline of the provisions of the Stimulus Bill that touch COBRA continuation coverage and how employers may be affected and is *not* intended to provide an in-depth analysis of this issue.

### **CURRENT LAW**

In essence, COBRA requires employers of 20 or more employees to permit certain employees (e.g., former workers who are separated from their employment for reasons other than gross misconduct, and workers who suffer a cutback in hours) whose group health insurance coverage would otherwise end, to temporarily (usually for up to 18 months) continue their coverage. The former employee may be required to pay up to 102% of the cost to the plan (100% of premium plus a 2% administrative fee).

“FAQs About COBRA Continuation Health Coverage,” an excellent, complete summary description of this issue, is available on the U.S. Department of Labor’s website. Go to [www.dol.gov](http://www.dol.gov). At the top right of the page at “Search Doc” type in “COBRA” and click on “Search”. Click on “Frequently Asked Questions About COBRA Continuation Health Coverage”.

## **THE STIMULUS BILL**

### ***Premium Subsidy:***

The Stimulus Bill enacts a temporary 65% federal subsidy for qualified beneficiaries (in this case, former workers *involuntarily* terminated for reasons other than gross misconduct, whose annual incomes do not exceed \$125,000 for individuals and \$250,000 for joint filers. The subsidy is fully phased out at \$145,000/\$290,000. The new premium subsidy begins on March 1, 2009 and is available to workers for a period of up to nine months who were involuntarily terminated for reasons other than gross misconduct, between September 1, 2008 and December 31, 2009.

The federal premium subsidy is claimed by:

- the plan in the case of a multiemployer group health plan;
- the insurer in the case of a fully insured plan providing coverage to an employer with fewer than 20 employees where the employer is required to provide continuation coverage under *State* law;
- the employer in the case of employers of 20 or more employees and who are providing COBRA continuation coverage because of *federal* law.

The subsidy payment will take the form of a credit against the recipient entity's "payroll taxes", meaning both FICA taxes and wage withholding amounts.

### ***Employer Notification Requirements:***

The COBRA premium subsidy enacted in the Stimulus Bill carries with it significant employer notification requirements, including to:

- eligible beneficiaries of subsidized COBRA continuation coverage;
- participating beneficiaries, of the change in the premium amount they must pay, and to issue new premium notices;
- qualified former employees who were involuntarily terminated for reasons other than gross misconduct, on or after September 1, 2008 who had initially declined COBRA continuation coverage, of their right to subsidized COBRA continuation coverage and that they have 60 days in which to elect that coverage. Former employees who were involuntarily terminated for reasons other than gross misconduct, on or after September 1, 2008 who elected COBRA continuation coverage but were not enrolled on February 17, 2009 must be similarly notified. (Former employees who then elect to take subsidized COBRA continuation coverage are entitled to the subsidized premium and health insurance coverage beginning on March 1, 2009); and

- all subsidized beneficiaries, that upon becoming eligible for health insurance coverage through another employer's plan their right to subsidized COBRA continuation coverage ends.

## **WHAT YOU CAN DO NOW**

Elements of the COBRA-related provisions of the Stimulus Bill require regulatory guidance regarding their implementation. Completion of these regulatory tasks is unlikely to be completed prior to the March 1, 2009 date on which the COBRA-related provisions of the Stimulus Bill go into effect. Additionally, employers are certain to require some time beyond that to come into full compliance. Consequently, employers need to begin now to make a demonstrably good faith effort to fulfill the most basic requirements of the new law. What follows are a few suggestions:

### ***Build an accurate database:***

- Identify and locate all former employees who were terminated on/after September 1, 2008.
- Determine which of those terminations were voluntary and which were involuntary for reasons other than gross misconduct.
- Determine which of your former employees who were terminated on/after September 1, 2008 did not elect COBRA continuation coverage.
- Determine which of your former employees who were terminated on/after September 1, 2008 elected COBRA continuation coverage but were not enrolled on February 17, 2009.

### ***Consult/coordinate with your health insurance vendors:***

- On all of the above, consult and coordinate with your company's health insurance vendor(s) (carrier(s), third party administrator, etc.) and legal counsel to be sure these needs are being addressed as thoroughly as possible and without costly and unnecessary duplication.

### ***Note:***

- The Stimulus Bill assigns the U.S. Department of Labor the responsibility to develop a model notice that employers may use to notify former employees of the availability of the new subsidy, to be made available by March 17, 2009.