New COBRA Rules Included in Stimulus Bill for Involuntarily Terminated Employees

The American Recovery and Reinvestment Act of 2009 (ARRA), enacted on February 17, 2009, includes new Consolidated Omnibus Budget Reconciliation Act (COBRA) provisions that will require employers to act quickly to bring their COBRA programs into compliance. The new COBRA provisions are effective for periods of coverage beginning on or after February 17, 2009. Thus, for health plans that provide coverage on a monthly basis, the law will become effective on March 1, 2009. Highlights of the new COBRA provisions are described below.

Subsidized COBRA Premiums for Eligible Individuals

ARRA provides that an individual entitled to elect COBRA continuation coverage (whether under federal COBRA law or similar state insurance law) as a result of an involuntary termination of employment that occurs between September 1, 2008 and December 31, 2009 is required to pay only 35 percent of the regular COBRA premium. The United States Department of the Treasury (Treasury) will pay the remaining 65 percent. The subsidized premium is available until the earliest of any of these conditions:

1. Nine months of reduced premiums have been provided
2. The first of the month following the date the qualified beneficiary becomes eligible for other group health plan coverage (with limited exceptions such as coverage under a health flexible spending account) or Medicare
3. The COBRA period otherwise expires or terminates

The former employee and other qualified beneficiaries are required to notify the COBRA administrator when such individual becomes eligible for other group health plan coverage or Medicare and thus ineligible for the reduced premium. If an individual does not timely notify the COBRA administrator, the individual will be required to pay a penalty of 110 percent of the premium reduction amount to the Internal Revenue Service (IRS).

Special Rules for Previously Terminated Eligible Individuals

Special rules apply to otherwise eligible individuals whose COBRA-qualifying event occurred prior to the date of the law's enactment:

1. If such individual did not have a COBRA election in effect on February 17, 2009, then a new 60-day COBRA election period must be offered. The 60-day election period begins on the date the employer notifies the individual about the new enrollment period. If elected, coverage must be provided starting with the first period of coverage that begins on or after February 17, 2009.
2. If such individual pays the full COBRA premium for any month that the reduced premium could have applied, the employer (for self-insured plans) or insurance company (for fully insured plans) must either reimburse the individual for the 65 percent overpayment or provide credit to such individual in the form of future reduced COBRA premium payments.

New Notices — Immediate and Delayed Delivery Requirements

ARRA requires the United States Department of Labor (DOL) and IRS to create model notices describing the new rights by March 19, 2009. However, group health plan administrators must start providing updated notices **immediately** for individuals whose involuntary termination of employment occurs on or after February 17, 2009. For individuals whose involuntary termination of employment occurred prior to February 17, 2009, the employer has until April 18, 2009 to provide notices about the new 60-day enrollment rights.

Plans Will Be Reimbursed for the Subsidy

Employers (for self-insured health plans), insurance companies (for fully insured health plans), and multi-employer plans will be able to recoup the 65 percent subsidy from the Treasury through an offset to payroll taxes.

Recapture for Higher Income Individuals

A COBRA-qualified beneficiary whose modified adjusted gross income exceeds $145,000 (or $290,000 in the case of a joint return) for a year is not eligible for the subsidy. If an individual's income is less than these limits but more than $125,000 (or $250,000 in the case of a joint return), a partial subsidy applies. If such an individual pays the reduced premium, the individual must claim the subsidy as an additional tax on his or her tax return. Such individual may opt out of the subsidy by filing a permanent waiver of the reduced premium with the health plan.

Plans Can Allow Qualified Beneficiary to Elect Lower Cost Option
ARRA permits, but does not require, employers to allow eligible individuals to elect a lower cost COBRA option. An employer that wants to offer this right must provide a notice to eligible individuals and provide up to a 90-day period to elect the lower-cost option.

Extension of COBRA Rights for Certain Other Individuals
ARRA also extends the COBRA coverage period for certain COBRA-qualified beneficiaries:

1. Trade Adjustment Assistance (TAA) eligible individuals may continue COBRA coverage until the latest of (1) the date otherwise provided under COBRA, (2) the date the individual ceases to qualify as a TAA eligible individual, or (3) December 31, 2010.
2. A former employee whose COBRA-qualifying event was a termination of employment or reduction in hours, and whose vested pension benefit is to be paid in whole or part by the Pension Benefit Guaranty Corporation (PBGC) as of the date of such qualifying event, may continue COBRA coverage until the latest of (1) the date otherwise provided under COBRA, (2) the date of the individual's death, or (3) December 31, 2010. In the case of such individual's death, the spouse or dependents may continue coverage for 24 months after the date of death, but not later than December 31, 2010.

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