

SURPRISE! STIMULUS ACT CHANGES EMPLOYER COBRA OBLIGATIONS

The American Recovery and Reinvestment Act of 2009 was approved by Congress last week, and signed yesterday by the President. It appears that the bill, expeditiously passed, will contain a fair number of matters that were not well publicized. This includes provisions for a federal government subsidy of COBRA premiums for up to nine months after an employee's involuntary termination of employment. It also provides a special COBRA election right.

The Subsidy

The subsidy granted by the Act is 65% of COBRA premiums for a period lasting up to nine months. For employees covered by this provision, a group health plan can only charge eligible individuals 35% of the normal COBRA premium, although it may seek reimbursement from the federal government for the remaining 65% of the COBRA cost. The reimbursement is accomplished by allowing the employer a credit against payroll taxes.

The COBRA premium subsidy is applicable to individuals who (1) became or become eligible for COBRA coverage between September 1, 2008 and December 31, 2009, (2) elect COBRA coverage during the original or special election period, and (3) are a qualified beneficiary due to an involuntary termination of employment. Although all subsidy eligible individuals may receive the subsidy, high income individuals – those who earn in excess of \$145,000 for a single taxpayer, or \$290,000 for a married taxpayer – will not benefit from the subsidy, because such individuals must repay the subsidy as a special tax for the year in which the subsidy is provided.

The subsidy begins at the next COBRA coverage period beginning after the date of the Act. For plans that use calendar months, this will be March 1, 2009. The subsidy ends at the earliest of the following: (1) the date the COBRA beneficiary becomes eligible for other group health plan coverage, (2) nine months after the date the subsidy began, or (3) the end of the maximum COBRA coverage period.

New Chance to Elect COBRA. Special COBRA Election Period

The Act also provides certain individuals a second opportunity to elect COBRA coverage. Individuals who lost coverage due to involuntary termination on or after September 1, 2008, and who either did not elect COBRA or elected and then dropped such coverage, are given a second chance to elect COBRA coverage. If such individual elects COBRA coverage during the 60-day period after such individual receives notification of the special election, such individual will also qualify for the subsidy.

Required Employer Actions

- Notify individuals eligible for the subsidy of the reduced premium amount.
- Identify qualified beneficiaries eligible for special COBRA election and notify them accordingly. The Act requires the U.S. Department of Labor to issue model notices for employers to use within 30 days and employers are expected to send out notices within sixty days to those who are eligible but have declined or dropped coverage.
- Contact employee benefits and payroll providers to ensure that the subsidy is properly reflected on future COBRA premium bills and to ensure that the subsidy offset against payroll taxes is obtained.

There undoubtedly will be many questions relating to the implementation of the new requirements, which are effective immediately. We will continue to monitor how this subsidy changes employers' COBRA obligations and provide updates as more information is available.