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Benefits Legal Update

President Signs Legislation Substantially Impacting Employers and Health Plan Sponsors

The Stimulus Bill: What This Means for COBRA and Unemployment Benefits

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act ("ARRA"), which was passed by both houses of Congress earlier in February. ARRA features substantial changes to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") and contains a wide variety of tax cuts for individuals and businesses. On February 26, the IRS issued initial guidance on the operation of the COBRA premium subsidy. The Department Of Labor has created a [Web site](#), on which additional guidance is posted.

COBRA Premium Subsidy

COBRA permits employers to charge employees electing COBRA coverage up to 102 percent of the cost of such continuation coverage. One of ARRA's most significant provisions is a temporary subsidy of COBRA premiums for individuals who are involuntarily terminated between September 1, 2008, and December 31, 2009. ARRA provides for a government subsidy of 65 percent of the premiums the terminated employees, and their covered dependents, are required to pay, for up to nine months. This subsidy applies to any group health plan, whether insured or self-insured, excluding health flexible spending accounts. The subsidy also applies to plans subject to state but not Federal COBRA laws. Individuals qualifying for the subsidy are responsible for the cost of coverage in excess of the subsidy. Individuals are no longer eligible for the subsidy when they are either offered other employer health coverage or become eligible for Medicare. The subsidy is not applicable for periods of coverage that began prior to February 17, 2009.

Certain employees are not eligible for the subsidy at all, for example employees who become eligible for COBRA for reasons other than involuntary termination (such as a reduction in hours). Also, employees who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction. Finally, this subsidy does not apply to terminated employees who have an adjusted gross income of more than \$125,000 (\$250,000 for joint filers). Any premium subsidy received by an ineligible individual will be recaptured through additional income taxes payable by such individual.

The federal government does not actually pay the subsidized cost of coverage; instead, the employer is responsible for covering the cost of the subsidy and will recoup these amounts through an offset against the employer's employment tax withholding obligation. This offset may be claimed each time the employer transmits withholding to the federal government or at the end of each quarter. The IRS has updated Form 941 to reflect these changes. The employer is required to keep records regarding the utilization of the subsidy by its former employees.

Election of Coverage and Option to Change

Under COBRA, qualified beneficiaries are generally offered the same coverage in which they were enrolled at the time of their qualifying event. This coverage generally cannot be changed until the next annual enrollment period. Under ARRA, involuntary terminated employees have 90 days to select coverage under a different, lower-cost health plan option than the one they were enrolled in at the time of their termination. This option to change coverage, however, is only allowed if an employer permits these changes and the new coverage option is also offered to active employees.

Additionally, ARRA provides that employees who were involuntarily terminated since September 1, 2008, and did not elect COBRA coverage when it was offered to them or elected COBRA coverage but are no longer enrolled, must be given another opportunity to elect such coverage. A notice to this effect must be given to these individuals within 60 days of the ARRA's enactment, along with any forms necessary for them to establish their eligibility for the subsidy. These employees then have 60 days after they receive notice to elect COBRA coverage at the subsidized rate. This coverage is not retroactive to the employee's qualifying event; rather, the coverage commences on the first period of coverage beginning on or after the ARRA's enactment. The COBRA period is measured from the date of the employee's qualifying event.

Unemployment Benefits

In addition to increasing and extending unemployment compensation benefits for various workers, ARRA excludes the first \$2,400 of unemployment compensation from income for 2009.

The Children's Health Insurance Program Reauthorization Act of 2009

On February 4, 2009, President Obama signed into law the Children's Health Insurance Program Reauthorization Act of 2009 ("CHIPRA"). CHIPRA reauthorizes the popular State Children's Health Insurance Program ("SCHIP") through September 30, 2013, expanding the program to provide health insurance to an estimated 6.2 million additional children. The law also imposes certain disclosure and notification requirements on employers, insurers, group plans, and plan administrators and provides additional special enrollment rights through amendments to the Internal Revenue Code, Employee Retirement Income Security Act of 1974 ("ERISA"), and the Public Health Service Act.

Special Enrollment Rights

Effective April 1, 2009, group health plans must permit an employee who is eligible, but not enrolled, for coverage under the plan to enroll if either of the following conditions are met: (1) the employee or dependent covered under Medicaid or SCHIP has coverage terminated as a result of loss of eligibility, and the employee requests coverage under the group health plan within 60 days after such termination; or (2) the employee or dependent becomes eligible for Medicaid or SCHIP assistance if the employee requests coverage within 60 days after the eligibility determination date.

Notice to Employees

Any employer that maintains a group health plan in a state that provides premium assistance under a state Medicaid plan, or child assistance under a state child health plan, must notify each employee, in writing, of the potential opportunities for premium assistance for health coverage for both employees and their dependents in the states in which they reside.

Notice may be given as part of the annual open enrollment, as part of the initial hire packet, or with the summary plan description. The Departments of Labor and Health and Human Services have been directed to issue a model notice by February 4, 2010. Employers must comply with this notice requirement beginning with the first plan year after the model notice is issued.

Disclosure to States

CHIPRA requires plan administrators to disclose to states, upon request, sufficiently specific information about their group health plans. The disclosure must allow states to determine employees' eligibility for benefits, the benefits available under the plan, the name and contact information for the plan administrator, and the premiums and cost-sharing required under the plan. Pursuant to CHIPRA, within 60 days of its enactment, the secretary of Health and Human Services and the secretary of Labor must establish a national working group to develop the necessary model coverage coordination disclosure form. Employers must comply with this disclosure requirement, beginning with the first plan year after the model form is created.

Premium Assistance Subsidy

Under CHIPRA, states may elect to offer a premium assistance subsidy to eligible low-income children under age 19 for "qualified employer-sponsored coverage" in the form of a reimbursement to the employee or as a direct payment to the employer. Employers are allowed to opt out of being paid the premium assistance directly. In such cases, the state pays the subsidy directly to the employee.

A "qualified employer-sponsored coverage" is defined as a group health plan or health plan insurance (other than health flex spending accounts or high deductible health plans), offered through an employer, that qualifies as creditable coverage under the Public Health Service Act, for which the employer contribution toward any premium is at least 40 percent and which is offered to all participants in a nondiscriminatory manner.

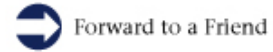
Employers and plan administrators need to act quickly to ensure compliance with the Stimulus Bill and to take all steps necessary to receive the full benefit from the COBRA subsidy payroll tax credit. Employers and plan administrators should also note that under CHIPRA's special enrollment requirements plans must inform employees about, and administer, the new rights

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To receive more information on either of the acts and its effects on your benefit programs or to obtain a copy of the relevant provisions, please contact one of the following attorneys:

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