

ANDREWS AND BEARD CLIENT ALERT

An E-Newsletter prepared for our clients presenting recent changes in the law.

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COBRA CHANGES AFFECT EMPLOYERS

The American Recovery and Reinvestment Act of 2009 (ARRA) provides for some short-term changes to the Consolidated Omnibus Budget Reconciliation Act of 1985, commonly referred to as COBRA. Historically, COBRA has allowed workers who have lost their jobs and health benefits to purchase group health coverage provided under their former Employer's plan for up to eighteen (18) months after their termination. The employee formerly was required to pay for the entire group rate, which although high, commonly was at a lower cost than for private, individual health insurance coverage.

Premium Reduction and Employer Reimbursement

Under the ARRA, the COBRA premium payment by employees who have been separated from their employment has been reduced to only thirty-five (35%) percent of the legally allowable COBRA coverage premium for a period of no more than nine (9) months. The legal allowable cost includes the cost of the premium itself as well as a small administrative fee, all of which is included when calculating the reduced premium contribution.

The remaining sixty-five (65%) percent of the legally allowable COBRA coverage premium is paid by the former Employer, insurer, or health plan. Employers should contact their insurer or health plan provider to establish who will be contributing the remaining sixty-five (65%) percent up front. This portion of the legally allowable COBRA coverage premium is reimbursable to the party which pays this amount.

These new COBRA payments are counted as a credit against certain employment taxes, such as the wage withholding taxes and FICA contributions on behalf of both the

Employer and employee. If the amount spent for the ARRA COBRA benefits is higher than the Employer's taxes due, then the Secretary of the Treasury will directly reimburse the Employer for the amount of any excess. Those sponsoring the former employee's subsidized coverage must provide the following: an attestation of involuntary termination for the individuals for whom the credit is claimed; a report on the credit claim and an estimate of the amount to be claimed for the next reporting period; the tax payer identification number of all covered individuals; the amount of the subsidy reimbursed for each eligible covered employee and qualified beneficiary; and a designation as to whether the subsidy reimbursement is for a single individual or for two or more individuals. Unfortunately, at this time there is no mechanism for submission of this information under the current payroll tax deposit rules or under any quarterly tax returns, but the Secretary of the Treasury has been authorized to issue regulations and other guidance for reporting these credits, which should be forthcoming in the near future.

Premium reduction assistance begins with the first premium period after February 17, 2009. There is no reduction for any premiums paid before this point.

Assistance Eligible Individual

An assistance eligible individual is someone who was eligible for COBRA continuation coverage at any time between September 1, 2008 and December 31, 2009, who elects COBRA continuation coverage, and who was involuntarily terminated between September 1, 2008 and December 31, 2009. If the individual meets these requirements, then the individual's COBRA coverage continuation premium obligations shall be considered paid in full when he or she pays thirty-five (35%) percent of the legally allowable COBRA coverage premium. Those earning over \$125,000 per year will receive a reduced benefit at a proportional rate until their earnings are over \$145,000, where there will be no premium reduction allowed. However, individuals will be responsible for this amount in their income taxes and may receive the benefit up front if they so choose. These employees are able to elect to opt-out of the reduction altogether.

Individuals will continue to be eligible for the reduced monthly COBRA premium for a period of no more than nine (9) months. This period may be shorter if the individual becomes eligible for other group coverage, Medicare, or if the statutory COBRA coverage period comes to an end. If a COBRA covered individual becomes eligible for coverage under Medicare or some other group health plan, he or she must inform the COBRA plan provider.

Notice Requirements for Employers

Employers must provide notice about the premium reduction program to individuals who have a COBRA qualifying event during the period of September 1, 2008 through December 31, 2009. These notices may be provided separately or included in the

notices distributed to the employee when they experience a COBRA qualifying event as the employer elects. Please note that these notices must be sent to employees who have been separated from their employment since September 1, 2008. This means that the Employer may need to go back over six (6) months to offer employees the opportunity to participate in the reduced COBRA premium program.

Special Election Opportunity

Individuals who were terminated prior to the passage of the ARRA but after September 1, 2008 are given the opportunity to re-enroll in their former Employer's COBRA continuation coverage. This covers employees who declined COBRA coverage or who are no longer enrolled because they could no longer afford to continue paying the premium. The special election period began on February 17, 2009 and will end 60 days after the Employer sends out the required notice. COBRA coverage elected during the special election period begins with the first period of coverage beginning after February 17, 2009.

The special election period has no effect on the original maximum coverage term of the COBRA continuation coverage, which will remain 18 months from the employee's involuntary termination.

Conclusion – Employer's Strategy for Moving Forward

In response to these changes, we suggest that Employers take a few steps in order to satisfy the requirements of this new law and avoid any legal pitfalls and their attendant liability. First, the Employer should identify any employees involuntarily terminated after September 1, 2008 who were COBRA eligible. All of these individuals should be contacted regarding the special enrollment period and be extended the opportunity to enroll or re-enroll in the Employer's COBRA coverage continuation program as soon as possible. Next, Employers should evaluate all of their COBRA communication materials and update them to include information regarding the ARRA premium reduction.

The Employer should also determine the amount of the COBRA premium that the employee will be responsible for. Also, a mechanism should be developed to allow involuntarily terminated employees who will report earnings over \$125,000 to opt-out of the subsidy as they are not eligible to receive the whole amount and would be forced to repay them when they file their yearly income taxes. Employers should also contact their insurer or plan provider in order to determine who will sponsor the subsidy. If the Employer is going to be the sponsor of the premium reduction, then the Employer should work with its corporate income tax preparer to ensure that the Employer receives the proper credit for the premium reductions it sponsors.

This E-Client Alert is designed to provide general information relating to new developments in the Law. It should not be construed as comprehensive coverage, or as legal advice concerning any specific factual issue. A legal opinion should be sought from an attorney of choice regarding any specific factual situation.

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