



## HR CORNER

FEES & BURGESS, P.C.



February 19, 2009

\* E-BLAST \*

### **COBRA Subsidy in Stimulus Bill Creates Administrative Burdens for Employers**

On February 17, 2009, President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009 (Act). The Act includes changes to requirements under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), in an effort to ease the burden of COBRA premium payments for employees who have been involuntarily terminated from employment. These changes affect all employers who provide group health plans for employees and who have terminated or laid-off employees as of and since September 1, 2008. These COBRA changes are in the form of a federal subsidy that will affect employer payroll administration procedures.

The Act reduces the cost of COBRA premiums for “assistance eligible individuals” to thirty-five percent of the otherwise-applicable premium amount. “Assistance eligible individuals” are defined as any qualified beneficiary: 1) who is eligible for COBRA continuation coverage between September 1, 2008, and ending on December 31, 2009; 2) who elects the coverage; and 3) whose “qualifying event” for eligibility for COBRA coverage is involuntary termination of employment during the same time period. For employees whose employment is terminated after February 17, 2009, such premiums assistance will end at the earlier date of: 1) the date the employee becomes eligible for coverage under any other group health plan; 2) the date the employee becomes eligible for Medicare or Medicaid; or 3) the earliest of either the date which is nine months after premiums assistance begins for the individual or the expiration of the maximum applicable period of COBRA continuation coverage for the individual.

This assistance also applies to payments made by employees who were terminated prior to the enactment of the Act. Because this assistance applies to employees terminated as of and since September 1, 2008, there are special provisions in the Act for employees who initially declined coverage or who have been paying full premiums since September 1. For those employees who initially declined COBRA coverage, the Act allows them to elect COBRA coverage now. This “extension of election period coverage” is a short-term allowance: these employees may elect coverage for periods beginning February 17, 2009, and ending sixty days after the date that the employee receives notice from his/her former employer notifying them of the coverage option. In addition, for employees who have paid full premiums for COBRA coverage between September 1, 2008, and February 17, 2009, and who would otherwise be eligible for benefits under the Act, the employer must choose to either reimburse the employee for the excess coverage that they have paid, or credit the excess payments towards future COBRA premiums. (However, for the employer to use the credit option, the employee must be able to use the credit within 180 days of the full premium payments.)



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This premiums assistance will be provided by the federal government through reimbursement to the employer. This means that employers who provide group health coverage through insurance must pay the remaining sixty-five percent of the applicable COBRA premiums. Afterwards, employers may obtain reimbursement via tax credits against the company's federal employment tax filings. To obtain reimbursement, employers will be required to submit reports that attest to the employee's involuntary termination, and that include the amount of taxes offset through premium payments and various details about specific payments on behalf of specific employees.

Employers must provide notice to employees of this premiums assistance. To do so, employers must temporarily amend their standard COBRA notifications (or include additional paperwork with the standard COBRA notices) to describe: 1) the forms needed to establish eligibility for the premiums reduction; 2) contact information of the plan administrator regarding this subsidy program; 3) a description of the "extended election coverage" if an employee previously declined COBRA coverage; 4) an explanation of the employee's requirement to notify the employer of any termination event such as eligibility for a new group health plan or eligibility for Medicare or Medicaid; and 5) a general description, displayed prominently, of the individual's right to reduced premiums and any entitlement conditions. For employees terminated prior to February 17, 2009, employers must provide this notice within sixty days of the signing of the Act.

These COBRA changes are temporary, but they will create additional administrative burdens for employers, at least for the next year. Employers should be particularly aware of the notice requirements and should begin to assemble and mail-out these new COBRA forms as soon as possible. In addition, company payroll administrators should carefully review the new Act's requirements as proper documentation is necessary to reserve the right to reimbursement for outlaid premiums payments. Employers should also be mindful of additional regulations related to these requirements that should be issued by various federal agencies in the next thirty days.

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