

Employment Law Alert

COBRA BENEFITS EXTENDED UNDER RECENT STIMULUS LEGISLATION

On February 17, 2009, President Obama signed into law the economic stimulus bill known as the American Recovery and Reinvestment Act (the “Act”). The Act includes several amendments to “COBRA,” the federal law that requires employers with 20 or more employees to offer a continuation of group health insurance benefits to individuals who would lose their coverage as a result of a “qualifying event,” such as a termination of employment. A number of states, including Massachusetts, have so-called “mini-COBRA” statutes that extend COBRA-like benefits to employers with as few as two employees. These “mini-COBRA” laws may also be affected by the new legislation. Under COBRA and under the Massachusetts mini-COBRA law, a recently terminated employee can elect to continue in the group health care plan in which he or she participated at the time of termination. The former employee is, however, required to pay the full cost of such coverage, plus a small administrative fee.

The Act was designed to assist eligible beneficiaries to continue health care coverage while they are between jobs. The Act accomplishes this, in part, by reducing the premiums paid by those who meet certain income eligibility requirements and are involuntarily terminated, and their families, by approximately 65%. Premium assistance may also be provided to those who are involuntarily terminated from smaller companies not governed by COBRA, but subject to a state “mini-COBRA” statute. For example, premium subsidies are available to those who are involuntarily terminated from Massachusetts companies with 2-19 employees under the Commonwealth’s mini-COBRA laws. The Act also obligates employers to provide updated notices to qualified beneficiaries under COBRA or mini-COBRA. Although this Alert summarizes the key provisions of the Act as they relate to COBRA, we recommend that you contact us or other counsel regarding how this new law may affect you or your business.

Who Is Eligible for the COBRA Premium Subsidy

The Act reduces the premium that an “assistance eligible individual” must pay to continue health insurance under COBRA from 102% of the total cost of coverage to 35% of the cost of coverage. The U.S. Government subsidizes the remaining cost of the premium by directly reimbursing the employer, plan administrator, or insurance company through a payroll tax credit.

An “assistance eligible individual” is an individual: (1) with a modified adjusted gross income of less than \$125,000 per year (or \$250,000 for married couples filing jointly); (2) who is eligible to receive COBRA continuation coverage as a result of an

involuntary termination (other than for gross misconduct) that occurred between September 1, 2008 and December 31, 2009; and, (3) who either elected to continue coverage under the time frame set forth in COBRA or elects to continue COBRA coverage under the additional election period provided under the Act. (Taxpayers who earn between \$125,000 and \$145,000, or between \$250,000 and \$290,000 for married couples filing jointly, are eligible for a reduced subsidy). An individual who is eligible for other group health insurance coverage (such as through Medicare, a new employer's health plan, or a spouse's health plan) is not an "assistance eligible individual."

Expiration of COBRA Premium Subsidy

The subsidized premium lasts up to 9 months after the eligible individual first receives the subsidy, but expires earlier if either (1) the assistance eligible individual becomes eligible for other group health insurance, or (2) he or she reaches the end of the maximum COBRA coverage period. (The maximum COBRA coverage period arising from a termination of employment is generally 18 months from the date of termination).

Additional Election Period

The Act provides certain individuals with another opportunity to elect health care coverage. Namely, employees who meet the income eligibility requirements and who were involuntarily terminated between September 1, 2008 and December 31, 2009 and who either elected not to continue health insurance coverage under COBRA or initially elected, but then dropped, such coverage must receive a notice as described below. An assistance eligible recipient may elect to continue coverage by completing the appropriate paperwork within 60 days of receipt of the notice.

Notices to Qualified Beneficiaries Under COBRA

Under the Act, employers are obligated to provide notice to all qualified beneficiaries under COBRA who have experienced a qualifying event at any time from September 1, 2008 through December 31, 2009. This notice must contain information about the subsidy and the opportunity to elect the subsidized COBRA health insurance coverage.

The U.S. Department of Labor has published several model notices under COBRA. These notices are tailored to different categories of recipients:

The notice to be sent to all qualified beneficiaries who experience any qualifying event between September 1, 2009 and December 31, 2009 is the [general notice](#). This notice contains the information required to be disclosed to covered beneficiaries under the Act, as well as information required by COBRA regulations that pre-date the Act;

The notice to be sent to those who: (1) experienced a qualifying event after September 1, 2008, (2) have elected coverage under COBRA, and (3) still have COBRA coverage is the [abbreviated general notice](#). This notice contains

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information relating to the Act but does not contain the COBRA coverage information that pre-dates the Act. The full general notice can also be sent in place of the abbreviated general notice;

The notice to be sent to those who became eligible under “mini-COBRA” laws is the [alternative notice](#); and

The notice to be sent to those who did not elect COBRA continuation coverage or elected to continue coverage, but thereafter discontinued COBRA coverage is the [notice in connection with extended election period](#). This notice should have been provided by April 18, 2009.

This *Alert* was prepared for the clients and friends of Sugarman, Rogers, Barshak & Cohen, P.C. It is provided for educational and informational purposes only and is not a substitute for professional advice on your specific legal situation.

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