



COURT WATCH™

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A Briefing on Recent Laws and Legal Decisions Impacting the Workplace

Stimulus Package Provides a Subsidy for COBRA Continuation

Effective March 1, 2009, individuals who are involuntarily terminated between September 1, 2008 and December 31, 2009 are eligible for a premium reduction subsidy to help them maintain health insurance coverage under COBRA.

The American Recovery and Reinvestment Act of 2009, widely known as the stimulus package, signed into law by President Barack Obama on February 17, 2009, provides for a nine-month, 65% subsidy for COBRA continuous health insurance coverage premiums. This subsidy is available for eligible employees who are involuntarily terminated between September 1, 2008 and December 31, 2009.

The subsidy begins March 1, 2009 for those employees currently on COBRA coverage and on the first period of coverage for eligible employees electing COBRA in the future. The subsidy ends after nine months or the earlier of the date the individual becomes eligible for other coverage or the COBRA continuation coverage period ends.

The COBRA coverage provision was added to alleviate the burden now imposed on eligible individuals of paying the full cost of health insurance premiums plus a 2% administrative fee. Under the new provision, employees will pay their 35% portion of the premium costs directly to the employer and the employer will make up the remainder. The employer can then apply the amount paid out as a deduction against their payroll taxes and if the payroll tax credit is insufficient to cover the COBRA expenses, the United States Treasury will reimburse the difference.

Who Is Eligible?

This subsidy is available to all employees who are involuntarily terminated during the applicable dates. Involuntarily terminated employees who did not elect to have COBRA coverage when they were initially laid off now have another opportunity to elect COBRA coverage, provided they do so within a 60-day opt-in period.

Eligible employees who did elect to receive COBRA coverage at the time they were involuntarily terminated between September 1, 2008 and February 17, 2009, are eligible for the premium subsidy starting on March 1, 2009, for up to 9 months going

forward. They are not, however, eligible for reimbursement for the amount of any health care premiums they paid before the law was enacted.

This 65% subsidy also is not available for employees whose income in the year they would receive the subsidy exceeds \$125,000 for an individual and \$250,000 for families.

What Must Employers Do?

Employers should promptly identify all those individuals who were involuntarily terminated between September 1, 2008 and February 17, 2009 and give them notice of their eligibility for premium reduction, and, for those who did not initially elect continuous coverage, notice of their new 60-day election period. This notice must be given by April 18, 2009, which is 60 days after the effective date of the new law.

Starting March 1, 2009, employers must start reducing COBRA premiums collected from the employee to 35% of the cost. Employers who are unable to make the reduction beginning in March may continue to charge the full premium to the employee for March and April, but will have to credit the subsidy against future premiums or refund it to the employee. Employers must be in full compliance with the subsidy requirement for all eligible employees by May 1, 2009. Employers must also keep track of the premiums paid out and update payroll taxes to reflect the credit for the subsidy amounts paid.

Going forward, all employees involuntarily terminated during the applicable time frame must be given notice of their eligibility for the COBRA payment subsidy and this notice should be given as part of the COBRA election notice.

Should you have any questions about the COBRA premium subsidy or your compliance obligations, please do not hesitate to contact us at 312.440.0602.

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