



February 2009

Labor & Employment Client Advisory

COBRA LAW UNDERGOES MAJOR CHANGES IN FEDERAL ECONOMIC STIMULUS PACKAGE

As part of the now-famous federal stimulus package signed into law on February 17, 2009, Congress included several major, temporary changes to COBRA, the health insurance continuation law. These changes, designed to help struggling workers and families, require **immediate** action on the part of all employers with more than 20 employees, and also virtually all employers in New Jersey. These changes will require covered employers to pay 65% of COBRA premiums for employees who lose (or have lost) their jobs "involuntarily," with the federal government later reimbursing the employer with stimulus package funds. In addition, employers will need to notify all employees involuntarily displaced **since September 1, 2008**, about the 65% subsidy and see if they are still eligible for and interested in purchasing COBRA insurance. Employers will need to start complying with these changes as soon as March 1, 2009.

The American Recovery and Reinvestment Act of 2009 ("ARRA") received much fanfare and media coverage, as Congress and the Obama Administration tediously worked out a nearly \$1 trillion plan to jump start the troubled economy. As part of the ARRA, it became well-known that the Democratic leadership fought for, and won, increased spending on "health care." Yet, less well-publicized was where these "health care" spending dollars were going to be used. The end result was a major change to COBRA and State law "mini-COBRA" laws, in an effort to help provide terminated workers with the ability to buy health insurance at a significantly reduced rate.

Most employers and employees are familiar with COBRA, which allows workers who leave their jobs, whether by choice or not, to continue buying health insurance for themselves and their families, at the same rate as what their employer had paid. This continuation coverage typically could continue for up to 18 months (or even longer in certain limited circumstances), as long as the employee paid his/her former employer for the cost of the insurance. But, in a difficult economy, displaced workers often found themselves unable to afford the COBRA payments, thereby risking a lapse of health care coverage. The ARRA seeks to lessen that risk.

The ARRA has a series of changes to COBRA that go into effect almost immediately. The two most significant changes for employers are:

1. COBRA Subsidy

First, any employee who is "involuntarily terminated" is now eligible to receive a subsidy from the federal government for 65% of their COBRA premium. Critically, this subsidy will have to be paid by employers "up front" -- the federal government will then reimburse the employer, dollar-for-dollar, through a credit taken off of the next federal payroll tax submission by that employer. This subsidy is intended to help families who suffered a job loss, but not a voluntary one. So, this subsidy is only available for employees who were "involuntarily terminated." The subsidy will continue for up to nine months, but would end sooner if the employee becomes eligible for health insurance elsewhere (most commonly, from a new employer). Also, in order to receive this subsidy, the employee will have to pay 35% of the COBRA premium.

2. Retroactive Notice

Second, the ARRA is hoping to go back in time and help workers who lost jobs in the earlier stages of the economic downturn. This was accomplished in the Act by requiring employers to send new COBRA notices out to all employees who were involuntarily terminated **after** September 1, 2008. If those terminated employees still do not have health insurance on March 1, 2009, they would likewise be eligible for the 65% subsidy, for the same nine-month period. However, employees cannot get retroactive coverage or retroactive subsidies. This subsidy would strictly be on a going-forward basis, with the intent being to help workers terminated after September 1, 2008, and who are still without alternative coverage.

There are other more subtle COBRA changes in the Act. And, there are as many questions as there are answers to these COBRA amendments. Some of the "answers" are:

- This subsidy applies to any employer subject to COBRA. So all Pennsylvania employers with more than 20 employees will need to comply. But, it also applies to virtually **every employer in New Jersey**, because it applies to any State law that provides COBRA-type protections, such as New Jersey's "mini-COBRA" law.
- Employers will have to go back to all employees who were involuntary terminated after September 1, 2008, and send new notices advising them of their new election period and the subsidy program.

· No official notice forms are available, but are expected to be issued within 30 days. Despite this, employers are expected to comply with the new COBRA requirements starting March 1, 2009, for any new terminations. However, the law does establish somewhat of a grace period for the retroactive notices, which can be issued anytime within the next 60 days (although the subsidy will accrue on March 1, 2009).

Other questions are not answered by the ARRA, such as the exact definition of "involuntary termination." While it is clear that employees who resign with no employer prompting are not covered, it is not certain whether employees who may have been encouraged to resign in advance of an announced layoff may be covered. These and other issues will need to be resolved over the next 30 to 60 days, as the government will be issuing regulations to address the implementation of this new law.

In an effort to assist you with any questions you may have on these COBRA changes, Archer & Greiner will be offering a free seminar on this new law, as well as another major new law expected to be enacted later this year, the Employee Free Choice Act. For more information about the breakfast seminar which will be offered on March 26, 2009, in Haddonfield, New Jersey, and April 16, 2009, in Philadelphia, please visit

<http://www.archerlaw.com/seminars.php?category=News+%26+Events&id=440>

In the meantime, if you have any questions about the COBRA changes, or how it or upcoming laws may impact your business, please contact a member of Archer & Greiner's Labor and Employment Department at 856-795-2121.

DISCLAIMER: This client advisory is for general information purposes only. It does not constitute legal advice, and may not be used and relied upon as a substitute for legal advice regarding a specific legal issue or problem. Advice should be obtained from a qualified attorney licensed to practice in the jurisdiction where that advice is sought.