eActionAlert

COBRA SUBSIDY EXTENSION REQUIRES IMMEDIATE EMPLOYER ACTION

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The American Recovery and Reinvestment Act of 2009 (ARRA) provides for premium reductions and additional election opportunities for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985, commonly called COBRA. Eligible individuals pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the coverage provider through a tax credit. The premium reduction applies to periods of health coverage beginning on or after February 17, 2009 and lasts for up to nine months for those eligible for COBRA during the period beginning September 1, 2008 and ending December 31, 2009 due to an involuntary termination of employment that occurred during that period. The TAA Health Coverage Improvement Act of 2009, enacted as part of ARRA, also made changes with regard to COBRA continuation coverage.

The provisions of this Act were extended by Congressional action in late December, 2009. This extension will require immediate action on the part of employers as explained below.

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SUMMARY

The COBRA subsidy bill passed as part of the stimulus package allows employees (and their dependents) who were involuntarily terminated from employment to pay only 35% of the premium that otherwise would be due for COBRA coverage. The original legislation provided for the subsidy to last for nine months.

Without the extension, that COBRA subsidy would not have applied to a terminated employee who became eligible for COBRA after December 31, 2009.

The COBRA subsidy *extension* does not change the requirements for the COBRA subsidy - the subsidy no longer applies once the former employee becomes eligible for coverage under another employer's plan. However, it does make the subsidy applicable to employees who are involuntarily terminated from September 1, 2008 through February 28, 2010 and for the subsidy to last for up to 15 months.

IMPORTANT! The subsidy extension has *retroactive* application for former employees who were terminated involuntarily and eligible for the original COBRA subsidy, but whose COBRA subsidy had already expired (without this new law).

COMPLIANCE STEPS INCLUDE:

Employers must mail written notice **by February 17, 2010** (60 days after enactment) of the COBRA subsidy extension as follows:

- To each employee involuntarily terminated on or after October 31, 2009, or who was terminated earlier but was still using the COBRA subsidy on or after October 31, 2009. ***Eligible dependents must also be notified.***
- To each former employee (and eligible dependent(s)) who were previously eligible for the COBRA subsidy but who stopped paying the required premium (whether before or after the old subsidy expired) and who, under the extension, will be eligible again for the subsidy. These former employees will have until the later of (a) 30 days after receiving notice or (b) February 19, 2010, to make payment of the retroactive premium due.
- To each former employee (and eligible dependent(s)) who were previously eligible for the COBRA subsidy and who now are paying the full COBRA premium, that the employee will again be eligible for the subsidy. The employer must either (a) refund the amount the employee overpaid (because the subsidy had expired before the extension) or (b) provide credit toward future COBRA premiums of the overpaid amount.

For employers with calendar year open enrollment, the retroactive application of the COBRA subsidy extension will require another open enrollment period.

This second enrollment period will be for former employees who let their COBRA coverage drop by not paying the premium but now can take advantage of the COBRA subsidy extension. This includes a former employee who is re-employed as long as he or she is not eligible for health plan coverage with the new employer (or any other employer, such as under a spouse's plan).

Compliance with the new COBRA extension will require employers to pay careful attention to their COBRA population, current and future. This is one of those cases where they may want to keep their professional benefits advisor close at hand.

What This Means to You and M&A's Recommended Actions

As stated above, the extension of COBRA benefits requires employers to take immediate steps to ensure compliance. COBRA-participant rolls must be reviewed to determine which employees were affected and how.

Then, by early-February, notices must be sent to current and (some) former COBRA participants advising them as to exactly how the change in the law applies to them and any action they must take.

Please NOTE: This is just an overview of the Extension and does not address all possible scenarios. We recommend that employers contact their professional benefits advisors for compliance actions that may be required for their specific circumstances.

Mahoney&Associates is an employee benefit consulting and management firm and, as such, we do not practice law.