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New Changes to COBRA Help Terminated Employees, Burden Employers

BY LISA M. CURRY

On February 17, the American Recovery and Reinvestment Act of 2009 became law. From an employment perspective, the most significant aspect of the ARRA are the amendments to COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1985), which create significant new health care insurance savings for terminated employees and their dependents.

What benefits are available:

When an employee (and dependents) becomes ineligible for the employer's group health insurance, he or she can continue health care coverage through COBRA (or, in 40-plus states, the equivalent state program). Until now, under COBRA the employee had to pay 102 percent of the premium, while the employer paid nothing. Under the ARRA, that has changed. Now, a qualifying employee only has to pay 35 percent of the COBRA premium for nine months. The other 65 percent is paid to the employer by the federal government. After nine months, the employee and dependents may still stay on COBRA if eligible, but the subsidy goes away.

What employers are

Curry is a senior associate with Deutsch Atkins in Hackensack.

covered:The new changes apply not just to employers with 20-plus employees who are mandated to provide health insurance continuation under COBRA, but also to the small employers who provide terminating workers with similar benefits under their states' "mini-COBRA" laws. Over 40 states, including New Jersey, have such mini-COBRA laws and are thus required to offer terminated employees the benefits mandated by the new ARRA modifications.

Who is eligible for the new

benefits: An employee who suffers involuntary job loss between September 1, 2008, and December 31, who had health insurance through the employer at the time of termination, is eligible for the new benefits, for a period of nine months. Note that only involuntary termination qualifies for the new benefits. There are other COBRA-qualifying events, such as reduction in hours, voluntary termination, and divorce, which do *not* create eligibility for the new benefits. Also, high earners are not eligible to receive the benefits: Any employee whose gross income exceeds \$145K per annum (and anyone who joint files with income over \$290K) is ineligible; anyone whose gross income exceeds \$125K (\$250K for joint filers) receives a lesser benefit.

Second chance to take CO-

BRA: If a terminated employee did not elect COBRA because it was too costly, but would like to sign up given the new reduction in premiums, there is good news. Starting on March 1, anyone who terminated at any time since 9/1/08 has 60 more days to decide whether to take COBRA. When an individual elects COBRA under the ARRA "second chance," their coverage will begin on the first period of coverage following enactment (probably March 1, 2009). Although there will technically be a gap in coverage (from date of termination to the date of new coverage), the ARRA mandates that an insurer cannot use this gap in coverage to disqualify coverage for any preexisting condition. Note also, the "second chance" provision does not extend the time that an individual can be on COBRA. The individual's maximum period for coverage remains 18 months from their termination; the 18 months does not start on the date COBRA coverage begins.

When does the new law take effect? The ARRA takes effect immediately. The benefits are due to begin for the first benefit month following enactment; in other words, qualifying individuals may be able to receive this benefit for their March COBRA premiums. Interestingly, the ARRA allows employers to continue to charge eligible individuals the full premium cost for 60 days following the bill's enactment, but when that 60-day mark is reached, they then have to either refund the overpayment or apply the overpayment to future premium payments. However, an employer may not deny coverage if it receives the 35 percent from the eligible individual.

How long do benefits last?

The subsidy is available for nine months to eligible individuals. However, if an employee becomes eligible for another health care insurance plan during those nine months, they will lose their eligibility for the subsidy. This might occur if the individual or their spouse becomes re-employed and is eligible for similar health insurance through the new employer, for example. The individual could

still remain on COBRA if they chose, but would no longer be eligible for the subsidy.

How do employees learn of the new benefits? Employers are required to modify or supplement the COBRA notifications that they currently use when a qualifying event occurs. Employers have to notify both newly qualifying employees, as well as those entitled to the “second chance” enrollment described above.

The U.S. government is slated to provide employers with model notification letters with a month of the bill’s enactment.

How are employers reimbursed by the federal government?

Employers will be reimbursed through a reduction in their payroll withholding taxes; because the ARRA is so new, the Treasury Department has not yet developed the mechanisms for this reimbursement. ■