

THE EXPANSION OF COBRA BY KAREN MCKEITHEN SCHAEDE & IVEY OAKLEY

On February 17, 2009, President Barack Obama signed an economic stimulus package known as the American Recovery and Reinvestment Act of 2009 (ARRA) Pub. L. No. 111-5, 123 Stat. 115. Among the significant changes prompted by the ARRA, is the addition of new and expanded provisions regarding the Consolidated Omnibus Budget Reconciliation Act benefits, better known as "COBRA." The temporary expansions on COBRA benefits by the ARRA will dramatically impact both employers and qualified individuals by paying for part of COBRA premiums.

The ARRA will offer "assistance eligible individuals" (AEIs) financial assistance for 65 percent of required COBRA premiums and for some AEIs who initially declined COBRA, the ARRA will provide a second chance to elect COBRA coverage. An AEI is defined by the ARRA as any person who loses group health coverage as a result of being "involuntarily terminated" between September 1, 2008 and December 31, 2009, as well as the terminated person's dependents. An employee's eligibility for the subsidy of the premium is determined by the employee's gross income for the year that assistance is requested. If the employee's gross income exceeds \$125,000 in the tax year or the employee jointly-filed a taxable amount that surpasses \$250,000 he will not be eligible for assistance under COBRA. Thus, an employee eligible for COBRA will be able to keep his insurance, while paying only 35 percent of the COBRA premiums for a period of nine months with the remaining 65 percent being paid by the employer. Consequently, the employer will then be able to obtain a reimbursement of the 65 percent through a payroll tax credit. An entity

seeking reimbursement for the payment of subsidies should take payroll tax credit on the IRS Form 941- which can be found on the IRS website. See www.irs.gov/newsroom/article/0,,id=204708,00.html.

In addition to the ARRA's expanding COBRA to provide 65 percent of an AEI's premium, the ARRA will create a second enrollment period for an AEI to elect COBRA coverage. In order to accomplish this new provision, the ARRA requires all plan administrators to present amended COBRA notices to AEI's within 60 days of the enactment of the ARRA- on or before April 18, 2009. ARRA, § 3001, 123 Stat. at 495-60. Therefore, employees who were terminated between September 1, 2008, and December 31, 2009, and did not initially choose COBRA coverage will have an additional period to enroll under the ARRA. These employees will have 60 days following receipt of the new notice to elect COBRA coverage at the subsidized rate.

Furthermore, the ARRA requires employers to supplement current COBRA notices with information about the premium subsidy and option to enroll or provide this information to terminated employees in separate documentation. The additional information must include the following:

- (1) "the forms necessary for establishing eligibility for premium reduction";
- (2) "the name, address, and telephone number necessary to contact the plan administrator";
- (3) "a description of the [60-day] extended election period";
- (4) a description of the qualified beneficiary's obligation to notify the plan of his or her eligibility for coverage under another group health plan or Medicare and the penalty for failing to do so;
- (5) a "description of the qualified beneficiary's right to a reduced premium and any conditions on entitlement to the reduced premium"; and

(6) if applicable, a description of the right to elect an alternative coverage option within 90 days, as described above. Id., 123 Stat. at 459. Employers and plan administrators can find model notices that will assist in determining the information that qualified beneficiaries must receive in different situations at www.dol.gov/ebsa/COBRamodelnotice.html. These notices should be adjusted to comply with the requirements of the employers' particular group health plans.

In summary, the ARRA has dramatically changed the law in numerous ways, which affect employers and employees alike – increasing the benefits for eligible individuals and producing additional responsibilities for employers.

THE ARRA HAS DRAMATICALLY CHANGED COBRA





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