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EMPLOYMENT LAW UPDATE

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The American Recovery and Reinvestment Act Amends Coverage Provisions of COBRA

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (“the Act”), attempting to provide economic stimulus to the nation’s economy. Among the provisions of the Act are important changes to the continuation coverage of the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”). The Act revises COBRA to alleviate nearly two-thirds of the cost to employees from continuing their medical benefits following an involuntary termination for eligible taxpayers earning below a maximum threshold. For eligible individuals, the Act provides for a 65 percent subsidy of the required COBRA premium for a maximum period of nine months. Eligible employees will only be required to pay 35 percent of the COBRA premium that he or she would otherwise be required to pay for employee and family coverage. This new COBRA benefit under the Act applies to persons who became eligible for COBRA between September 1, 2008 and December 31, 2009, due to an employee’s involuntary termination of employment. The Act requires employers to change some COBRA notices and practices, and also affects payroll tax obligations.

The Law Before The Act

Before the Act was signed into law, employers with 20 or more employees were required to offer continuation coverage to employees and dependents who lost coverage under the employer’s group health plan due to a termination of employment, reduction in hours or service or other “qualifying event.” COBRA coverage was generally available for 18 months from the date that coverage was lost, but could be terminated for a variety of reasons, including non-payment of premiums. Employers had no obligation to pay any portion of the COBRA premiums, while employees and dependents choosing to continue medical coverage were generally required to pay all COBRA premiums.

COBRA Under The Act

In general, the Act provides a subsidy for eligible employees, which is reimbursed to employers, other plan sponsors, and insurers through reduction in payroll tax liability. Under the Act, a participant will only be required to pay 35 percent of the COBRA premium. The remaining 65 percent of the COBRA premium will be credited against the payroll taxes of the entity receiving the 35 percent payment from the participant. The Act applies to any entity subject to continuation coverage requirements, whether under federal COBRA law or through a state’s mini-COBRA law.

Who Is Eligible?

A person qualifies as an “assistance eligible individual” if he or she is involuntarily terminated from employment during the period from September 1, 2008, through December 31, 2009, and is or was eligible to receive COBRA during that period. Individuals who elected COBRA due to an involuntary termination on or after September 1, 2008, but prior to the enactment of the Act, are eligible to receive the subsidy on a prospective basis only, beginning with the first coverage period following the date of enactment. Persons eligible to elect COBRA during the operative time period who did not previously elect COBRA must be given a special enrollment opportunity to elect COBRA now, on a prospective basis.

The subsidy is phased out for individuals with adjusted gross income between \$125,000 and \$145,000 (for single filers), and between \$250,000 and \$290,000 (for joint filers). If a subsidy is provided to an individual whose adjusted gross income exceeds these limits, the amount of the subsidy must be added to the individual’s tax liability in the year in which the subsidy was provided.

Employer Obligations Under The Act

Administering the Act will require employers to modify many of their COBRA notices and practices, and may affect their payroll tax obligations. Employers should be aware of the following obligations arising under the Act:

- All employees eligible for COBRA on or after September 1, 2008, must receive a notice of the availability of premium assistance. This notice can be incorporated into an existing COBRA notice, or added as a supplemental notice.
- Assistance-eligible employees who are currently covered by COBRA must be notified that they are only required to pay 35 percent of the COBRA premium during the period of premium assistance. Assistance-eligible employees who are not currently covered under COBRA must be notified that they now have a second opportunity to elect COBRA.
- The Department of Labor will issue model notices by March 19, 2009, but employers may choose to send the required notices out sooner so that premium assistance can begin earlier. The notices must be sent by April 18, 2009.
- Employers wishing to be eligible for reimbursement of the 65 percent of premium assistance will need to provide a list of their assistance-eligible employees and the amount of premium assistance paid by the employer as part of its payroll reporting obligations.

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If you would like further information, please contact your Payne & Fears LLP attorney.

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