

EMPLOYMENT, LABOR
& BENEFITS LEGAL UPDATE



March 4, 2010

COBRA Subsidy Extended!! Again!!

Late on March 2, President Obama signed the Temporary Extension Act of 2010, and included within that law is yet another extension of the COBRA premium subsidy enacted last February as part of the American Recovery and Reinvestment Act of 2009 (“ARRA”). Our earlier updates on the ARRA COBRA premium subsidy can be found in “COBRA Provisions in the American Recovery and Reinvestment Act of 2009 (ARRA),” “COBRA Provisions Q&A and IRS Form 941,” “Employee Benefits Security Administration Issues Model COBRA Notices,” “IRS Hints at What an “Involuntary Termination” Means for Purposes of ARRA,” “Has the EBSA Played Scrooge with the ARRA COBRA Subsidy??,” and “COBRA Subsidy Extended!!”.

The COBRA subsidy extension enacted Tuesday extends the eligibility period for the subsidy for one month (through March 31, 2010). This means that an individual who loses group health plan coverage due to an employee’s involuntary termination of employment that occurs through March 31, 2010 will be eligible for the subsidy. Prior to this amendment, the termination of employment had to occur on or before February 28, 2010. In addition, the new legislation includes as “assistance eligible individuals” anyone who is involuntarily terminated from March 2, 2010 through March 31, 2010, even if such individual’s entitlement to COBRA was due to an earlier reduction in hours of employment, and not due to the involuntary termination of employment. Prior to this change, the IRS made it clear that if an individual became entitled to COBRA due to a reduction in hours, and later incurred an involuntary termination, the individual was not an “eligible assistance individual” because the qualifying event resulting in the COBRA right was the reduction in hours, not the involuntary termination. These “new” eligible assistance individuals will become entitled to the subsidy the first period of coverage that begins after the involuntary termination of employment, but the individual’s original 18-month COBRA period will not be extended.

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Of course some of these “new” eligible assistance individuals never elected COBRA, or maybe dropped COBRA after the earlier reduction in hours, and are not on COBRA now. In that case, a second chance at COBRA with the subsidy must now be offered. Within 60 days of the enactment of this new legislation, group health plan administrators must notify all individuals who had a qualifying event due to reduction in hours on or after February 1, 2009 and who subsequently incurred an involuntary termination of employment from March 2, 2010 through March 31, 2010, that this second chance election is available. Those who take advantage of this second chance election cannot be required to pay for any COBRA coverage from the date of the loss of coverage due to the reduction in hours and the date of the involuntary termination of employment. Also, the period of time from the original qualifying event through the beginning of the first period of coverage after the involuntary termination of employment does not count as a “break in service” for purposes of HIPAA’s preexisting condition exclusion rules.

In order to minimize the use of refunds or credits, group health plan administrators are encouraged to issue the required notice as soon as possible. Previously issued model notices from the Department of Labor can be used (with some modification to reflect the extension) to communicate these changes to affected assistance eligible individuals.

Please contact Attorney Mary Ellen Schill at (715) 845-4336 with any questions you have concerning this legal update. ♦

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ABOUT RUDER WARE'S EMPLOYMENT, LABOR & BENEFITS GROUP

Ruder Ware's Employment, Labor & Benefits practice group works in tandem with private and public employers providing counsel on all aspects of human resource management. The breadth of services offered, unique for a law firm headquartered in Wausau, Wisconsin, includes counsel on highly sensitive issues such as workplace harassment, employee privacy, drug and alcohol testing, and disciplinary issues. In addition, attorneys design and assist with the development, implementation, and enforcement of policies and procedures relating to benefits, hiring practices, employee handbooks, state and federal discrimination laws, FMLA, FLSA, ADA, OSHA, and workers' compensation.

Attorneys in the group regularly represent public and private sector employers in collective bargaining, negotiations, union elections, unfair labor practices, and grievance arbitration matters in addition to guiding nonunion clients on maintaining their union-free status.

Actively involved in organizations with human resource professionals as the primary member base, our attorneys are in tune with the various sensitivities and complexities of the profession. Our attorneys often present seminars and in-house training on employment law topics both across the state and nationwide.

Areas of practice by the Employment, Labor & Benefits practice group:

- Employee Benefits & Executive Compensation
- Employment Law
- Labor Law



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