BENESCH
Attorneys at Law

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Employee Benefits & Compensation

NEW COBRA PROVISIONS

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 ("ARRA") into law. Notably, ARRA significantly modifies the COBRA continuing coverage rules. These changes, which are effective immediately, mean employers must promptly update their COBRA administration policies, and review their health and welfare plans to ensure compliance with the new rules. The following summarizes the key provisions of ARRA with respect to COBRA.

- Employees who are involuntarily terminated between September 1, 2008 and December 31, 2009 are only required to pay 35% of COBRA premiums for up to nine months after separation from employment.
- The federal government will subsidize the remaining 65% by allowing employers to deduct the unpaid subsidy amounts from periodic payroll tax deposits. If an employee's unpaid subsidy amount exceeds his or her tax liability, the federal government will refund the excess amount to the employer as if an overpayment occurred.
- If, under the terms of an employer's health and welfare plans, the employer subsidizes COBRA premiums, the employee is required to pay 35% of the non-subsidized premiums. Additionally, the employer is only allowed to recover 65% of the non-subsidized premiums.
- The reduced COBRA premiums only apply to employees who were involuntarily terminated. Employees who experience other qualifying events, such as a reduction in hours, divorce, or voluntary termination, do not qualify for the reduced premiums.

What Employers Must Do:

1. Employers must allow qualifying employees who initially declined COBRA continuation coverage, or who initially enrolled but terminated coverage prior to the enactment of ARRA, to elect COBRA continuation coverage within sixty days of providing notice of the extended election period (discussed below).

2. Employers must provide an additional COBRA notice to all qualifying employees, including employees who were involuntarily terminated after September 1, 2008, but before the enactment of ARRA, and received their initial COBRA notice. The additional COBRA notice must inform qualifying employees of (1) the reduced COBRA premiums, and (2) the employees' option to enroll in different plan coverage, if the employer permits such a change. The Department of Labor will issue a model notice within 30 days of the enactment of ARRA.

3. Employers must provide notice of the extended election period to qualifying employees who were involuntarily terminated after September 1, 2008, but before the enactment of ARRA.

4. Employers must amend their benefit plans and summary plan descriptions to be consistent with the new COBRA rules.

Additional Information

For more information about the impact of ARRA on the COBRA continuation coverage rules, please contact

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