

Employers Need to Know

Employment Law Alerts from Ober|Kaler's Employment & Labor Group

**Employment
& Labor Group**

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What Maryland (Small) Employers Need to Know: The Impact of New Emergency Legislation on Required COBRA Notifications

The Way Things Were

The Consolidated Omnibus Budget Reconciliation Act (COBRA) affords workers and their families who lose their health benefits, the right to choose to continue group health benefits provided by their group health plan. Such coverage spans a limited period of time and applies only under certain conditions, such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, etc. Until recently, qualified individuals were required to pay the entire premium for coverage up to 102 percent of the cost to the plan.

COBRA only applies to employers with 20 or more employees. Accordingly, small businesses in Maryland employing less than 20 employees were not subject to COBRA compliance. However, Maryland-based small businesses with less than 20 employees were still obligated to comply with Maryland's "continuation of coverage" regulation. Maryland's continuation of coverage statute is widely referred to as a "mini-COBRA" provision. Maryland's continuation of coverage provision mirrored COBRA with respect to the requirement that eligible individuals were required to pay the entire premium for coverage, up to 102 percent of the cost of the plan.

The Way Things Are Now

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA) into law. ARRA alters COBRA by increasing the payment and notification responsibilities of employers. Most notably, under ARRA, eligible employees who were terminated between September 1, 2008 and December 31, 2009 (other than for gross misconduct) are now responsible for only 35% of the cost of premiums, with the employer being responsible for paying the remaining 65%, which would be offset by a payroll tax credit. This, obviously, is a tremendous incentive for employees and eligible individuals to elect COBRA continuation.

Unfortunately, the passage of ARRA left an outstanding question for small employers in Maryland. Specifically, were Maryland small employers obligated to notify eligible individuals of their rights under ARRA, and/or offer a similar premium reduction? After ARRA was signed into law in February 2009, the answer was "no" on both counts because, as of February 17, 2009, Maryland's mini-COBRA, had not been altered or amended. However, that is no longer the case.

Employers Need to Know: New Maryland Law

Earlier this month, the Maryland General Assembly passed emergency legislation in the form of Senate Bill 84. Senate Bill 84, which was recently signed by Maryland Governor Martin O'Malley, instructs, among other things, that carriers who issue health benefit policies to small employers must notify eligible employees of their rights to elect the option of reduced premium payments as specified in ARRA.

The deadline for notices to be sent by insurers to eligible employees is April 18, 2009. If employers impacted by Senate Bill 84 have not already coordinated this issue with their health insurance carriers, they are highly encouraged to do so immediately to avoid any controversy or the potential imposition of penalties or fines.

For assistance in addressing COBRA and Maryland continuation of coverage issues in the workplace, or advice relating to your general human resources needs, please contact your Ober|Kaler attorney or any member of **Ober|Kaler's Employment & Labor Group.**

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