

# Law of the Workplace

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**CLIENT ALERT**

## **Stimulus Package Contains Immediate, Significant Requirements for Employers Pertaining to Administration of COBRA Benefits**

Until recently, an employee involuntarily terminated for reasons other than gross misconduct could elect to continue group health benefits under COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1985) by paying up to 102% of the monthly premiums. That has changed with the signing into law of the American Recovery and Reinvestment Act ("the Act") on February 17, 2009. Effective March 1, 2009, employers may not require employees involuntarily terminated between September 1, 2008 and December 31, 2009 to pay more than 35% of the premium. This premium assistance lasts for the first nine months of the former employee's continued coverage. For this period, the employer must pay the 65% balance of the premium and will receive a tax credit against payroll taxes (i.e., wage withholding and FICA) to ease the pain. In addition, eligible individuals may change their health plan to a less expensive option when electing to continue benefits using the subsidy, if the employer chooses to provide this option.

There are a few restrictions on the subsidy. The nine-month period of premium assistance will terminate early for any individual who becomes eligible for Medicare or a new group health plan during that time. In such case, the individual must notify the group health plan in writing of the new coverage, or pay a penalty of 110% of the premium reduction unless the failure to provide notice was due to reasonable cause. An individual electing the subsidized premium whose modified adjusted gross income exceeds \$125,000 (or \$250,000 for a joint return) is subject to a tax recapture of the subsidy. The subsidy also may not be used for coverage under health flexible spending accounts.

The Act is retroactive to September 1, 2008. Any employee terminated since that date who did not previously elect for continued coverage or elected but lost coverage due to premium nonpayment, is now allowed a new 60-day period to elect continued benefits using the Act's subsidized premium payment relief. These individuals will not be entitled to any credit for premium payments made above 35% of the premiums prior to March 1, 2009, nor will they be entitled to any benefits extending beyond the maximum coverage period provided for under COBRA (typically 18 months from termination). Employees whose terminations are deemed voluntary, and who are found ineligible for subsidized coverage under the Act will be allowed to appeal this determination to the Department of Labor on an expedited basis, giving the DOL 15 business days to review the terminated employee's eligibility.

The Act also imposes new notice and reporting requirements upon employers. Employers have 60 days from February 17, 2009 to (1) provide notice to all former employees involuntarily terminated since September 1, 2008 of their rights and obligations under the Act; and (2) to deliver forms necessary for establishing eligibility for the premium reduction. Going forward, employers will be required to provide the notice and forms each time it involuntarily terminates an employee until the end of 2009. The DOL must issue a model notice at the end of March 2009. Employers seeking reimbursement of premium shares under the Act must submit (1) an attestation of involuntary

termination for each covered employee; (2) a report of the amount of payroll taxes offset by the subsidy, as well as the estimated offsets of such taxes for the subsequent reporting period for reimbursements; and (3) a report of the taxpayer identification numbers of all covered employees, the amount of subsidy reimbursed for each covered employee and qualified beneficiaries, and an indication of whether the subsidy reimbursement is for coverage of one individual or two or more individuals.

Employers are urged to immediately confer with their group health plan administrators to implement the new requirements for COBRA continuation coverage. As the provisions of the Act impacting COBRA are lengthy and detailed, this article should not be relied upon in lieu of comprehensive legal advice. Accordingly, please be sure to contact this office directly with any questions about how the Act and its attendant changes to COBRA will affect your business.

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*This material is intended to provide you with information regarding a noteworthy legal development. It should not be regarded as a substitute for legal advice concerning specific situations in your operation. If you have any questions or would like additional information on this topic, please contact our Firm at (860) 727-8900 or [www.siegelconnor.com](http://www.siegelconnor.com).*

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