

Allen Matkins

Labor & Employment Legal Alert



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In 2006 and 2008, *Corporate Counsel* magazine named Allen Matkins a "Go-To" law firm for labor and employment.

Stimulus Bill Includes Immediate Changes To COBRA Continuation Coverage Rules

The American Recovery and Reinvestment Act of 2009, which was signed into law on February 17, 2009, contains immediate and significant changes to COBRA continuation coverage rights based on involuntary terminations of employment occurring on or after September 1, 2008 and on or before December 31, 2009. The changes include the following:

- **Discounted Premiums.** The COBRA premiums for eligible individuals will be reduced by 65% for up to 9 months of COBRA coverage beginning on or after March 1, 2009.
- **New Notices and Elections.** Those who previously were eligible for COBRA but either did not elect COBRA coverage or lost eligibility for COBRA coverage, must be given a second election to receive COBRA coverage at the reduced rate. Updated notices that explain the new law must also be sent to eligible individuals currently on COBRA, and those who become eligible before the end of 2009. The updated notices must be furnished to eligible individuals by April 18, 2009. The normal COBRA penalties apply to late notices.
- **Option to Enroll in Different Coverage.** An employer may, but is not required to, offer enrollment in a coverage option that is less expensive than the coverage option that an eligible individual was enrolled in at the time of the qualifying event. The new option, if offered, must be coverage that is available to active employees, and is not limited to dental, vision, flexible spending account, or other limited coverage.
- **Refunds or Credits for Overpayments.** Eligible individuals who pay more than 35% of the full COBRA premium for coverage on or after March 1, 2009 must receive either (i) a reimbursement of the excess amount or (ii) a credit for the excess amount that will reduce subsequent premium payments. However, the credit option is available only if it is expected that the full credit will be used by the eligible individual within 180 days of the date the individual paid the full COBRA premium amount.
- **Employers Recoup 65% Subsidy through Payroll Tax Reporting.** Once an eligible individual pays 35% of the COBRA premium, the employer is entitled to recover the 65% subsidy. This is done by treating the subsidy as a payment of payroll taxes.
- **New Reporting Requirements.** Detailed reports will be required to verify eligibility for payroll tax credits, including a report showing the social security numbers of eligible employees, the subsidy amount for each, and a

designation of whether coverage is for one individual or for two or more individuals.

- **No Retroactive or Extended Coverage.** Eligible individuals are entitled to a 60-day election period after receiving the required notice. Discounted coverage is not available prior to March 1, 2009, and does not extend the COBRA period beyond its normal ending date based on the date of the involuntary termination of employment.
- **Maximum Period of Discounted Coverage.** The maximum period of discounted coverage generally is nine months. It may end sooner if the individual is eligible for coverage under any other group health plan (other than limited coverage plans) or is eligible under Medicare. Eligible individuals are required to provide written notice of other health plan or Medicare coverage, and may incur penalties if they fail to do so.
- **Expedited Department of Labor Review of Denials.** If a group health plan denies discounted coverage to an eligible individual, the U.S. Department of Labor shall provide for expedited review within 15 business days after receipt of a written request from an eligible individual. The Department's determination will be granted deference by a reviewing court.
- **Model Notices to be Published.** As indicated above, notices to eligible individuals must be furnished on or before April 18, 2009. The U.S. Department of Labor has been instructed to prepare model notices on or before March 19, 2009.
- **Discount Taxable to High-Income Individuals.** For most individuals, the 65% discount on COBRA premiums is not taxable. However, this income exclusion is phased out for individuals with modified adjusted gross income of more than \$125,000 (or \$250,000 for married individuals filing a joint return).
- **Trade Act Changes.** The COBRA rules for those entitled to benefits under the Trade Act have been modified.
- **Plan and SPD Amendments.** Group health plan documents and summary plan descriptions must be amended to take into account the provisions of the new law.

This alert sets forth only a brief overview of the new COBRA requirements. Additional details are set forth in the Stimulus Bill, while other details have been left to future regulations and pronouncements.

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