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Employers Need to Know

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

Employment & Labor Group

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COBRA Subsidization Under the American Recovery and Reinvestment Act to Take Effect March 1, 2009

President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA) into law on February 17, 2009. The ARRA alters the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) by increasing payment and notification responsibilities of employers. This e-alert is a brief summary of the substantive changes, which go into effect on March 1, 2009.

Under COBRA, eligible terminated employees, employed at businesses with 20 or more employees, are entitled to at least 18 months of health coverage under their employer's group health plan. Before passage of the ARRA, employees were responsible for up to 102% of the cost of premiums associated with such a plan. Under the ARRA, employees involuntarily 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. Employers are responsible for the remaining 65% but receive a refundable payroll tax credit for the cost. Employers can also choose to offer an alternative plan to employees if the plan's premium is not more than the premium paid by the employee during employment and the plan is offered to active employees.

The ARRA applies retroactively to include employees who, before March 1, 2009, opted out of COBRA coverage, cancelled coverage, or accepted coverage with full premium payment. Employers must notify such employees by *April 18, 2009* of the right to specially elect the new COBRA coverage. Employees have 60 days from receipt of notice to consider the subsidized coverage. Employers must refund those employees who paid full premiums or issue a credit toward future premium payments within six months of the employee's election of subsidized coverage.

The subsidized coverage is available to eligible employees for only nine months, ending sooner if the employee begins coverage under another group health plan (excluding those plans with vision or dental coverage only), a flexible spending plan, or an on-site medical treatment plan, or if the employee becomes eligible for Medicare. An employee who begins coverage under another plan must notify the employer in writing. If this is not done, the employee is responsible for 110% paid of the subsidy after the additional coverage began. Employees with an annual salary of between $125,000 and $145,000 are phased out of the subsidized coverage and may be subject to increased taxes to recapture subsidized payments. For this reason, employees with an income of $125,000 or more can opt out of the subsidized coverage.

The ARRA requires employers to comply with its provisions beginning *March 1, 2009*. To prepare, employers should:

1. Collect information on employees terminated on or after September 1, 2008, including whether they were involuntarily terminated or elected/declined COBRA coverage, as well as updated contact information.

2. Notify eligible employees of the amended COBRA provisions. The Department of Labor plans to issue model employee notice forms by March 19, 2009. Retroactively eligible employees (terminated after September 1, 2008, but before March 1, 2009) must receive notice of their ability to specially elect the new COBRA coverage by April 18, 2009. Employees terminated after March 1, however, must be immediately aware of the right to pay the reduced cost (if an employee pays more than the required 35% for March and April 2009, employers must reimburse the employee or credit the payment towards future payments within 60 days).

3. Determine whether to offer alternative health care plans to eligible employees.

4. Alter administrative procedures and policies to allow for:

    - reduced COBRA payment by employees for nine months;
    - payment of the remaining COBRA balance by the employer to the health care provider;
    - reimbursement (or credit towards future payments) of employees who paid more than the reduced payment;
    - calculations to determine timeframe of COBRA coverage period since the ARRA does not extend employee coverage (if an employee elects COBRA on March 1, but was terminated on October 1, 2008, coverage ends 18 months from October 1, 2008); and
    - high income individuals to opt out of the subsidized coverage.

For compliance assistance please contact **Jerry Oppel** at (410-347-7338 | **jjoppel@ober.com**), your Ober|Kaler attorney or any member of the Ober|Kaler **Employment & Labor Group.**

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