



Legal Alert: IRS Issues Guidance Regarding Administration of the COBRA Subsidy

6/25/2009

Now that the Department of Labor has issued several pieces of formal guidance aimed at assisting employers and insurance carriers to implement the COBRA subsidy rules introduced by the American Recovery and Reinvestment Act of 2009 ("ARRA"), the IRS has now issued additional guidance aimed at assisting employers in administering the COBRA subsidy.

The IRS has recently added new entries to its FAQ guidance concerning the COBRA subsidy rules, in which it addresses several important issues, including but not limited to:

- The circumstances under which the IRS will accept an employer's determination that an employee's termination of employment was involuntary for purposes of claiming a payroll tax credit;
- Whether the COBRA premium subsidy applies to continuation coverage voluntarily provided by an employer;
- Whether continuation coverage required under state law that is otherwise comparable to federal COBRA coverage fails to be "COBRA continuation coverage" under the ARRA because it is provided after the employer has gone out of business and the employer's group health plan has been terminated; and
- Whether the end of a seasonal period of employment is considered an involuntary termination.

The IRS's full guidance about the appeals process can be found at <http://www.irs.gov/newsroom/article/0,,id=205364,00.html>.

We previously distributed legal alerts discussing all of the guidance issued to date, by both the DOL and the IRS, concerning the COBRA subsidy rules.

You can access these legal alerts via the following links:

<http://www.fordharrison.com/shownews.aspx?show=4558>,
<http://www.fordharrison.com/shownews.aspx?Show=4628>,
<http://www.fordharrison.com/shownews.aspx?show=4663>, and
<http://www.fordharrison.com/shownews.aspx?show=5000>.

The Bottom Line:

Now that plan sponsors have had time to become familiar with the rules

implementing the COBRA subsidy, these entities must concentrate on developing programs to properly administer the subsidy rules in compliance with the ARRA.

Should you have any questions, please contact the author of this legal alert, Lindsay O'Brien, lobrien@fordharrison.com, 904-357-2005, or any attorney in Ford & Harrison's Employee Benefits Practice Group.