Employment Law News

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The American Recovery and Reinvestment Act ("ARRA"), enacted February 17, 2009, includes COBRA provisions that will affect employers who laid off or otherwise involuntarily terminated employees since September 1, 2008 or who will involuntarily terminate employees during the rest of 2009. ARRA provides that employees involuntarily terminated from September 1, 2008 through 2009 will be eligible for a government subsidy of 65% of their COBRA premiums for a maximum period of 9 months. If employees eligible for the subsidy did not elect COBRA prior to February 17, 2009, they need to be given the opportunity to elect COBRA and receive the subsidy prospectively. If they did elect COBRA, their premiums need to be adjusted for compliance with the subsidy. The mechanics of the subsidy are sketchy at this point, but generally plan sponsors will collect 35% of the COBRA premium from employees. Then, instead of receiving reimbursement for the remaining 65% from the government, employers will take a credit against payroll taxes. The subsidy is effective as of February 17, 2009.

There are some limitations. The subsidy applies only to the extent the employer does not subsidize COBRA itself. Therefore, if the employer has agreed to pay more than 65% of COBRA premiums for a stated period of time as part of the severance package, the subsidy will not kick in until after that stated period expires. In addition, once the COBRA participant becomes eligible for other insurance or Medicare, he is no longer eligible for the premium subsidy even if he does not elect the new coverage. Further, individuals with adjusted gross income exceeding $125,000 ($250,000 for joint return filers) are not eligible for the full subsidy, which is phased out completely for adjusted gross incomes of $145,000/$290,000. Employers are not responsible for enforcing these limitations. Individuals who receive a subsidy for which they are ineligible will have to report the amount in their income tax returns and their tax obligation for the year will be increased by the amount of the subsidy.

The DOL and IRS are working on model notices, to be issued within 30 days of enactment of ARRA. The notices do not have to go out until April 14, 2009 (60 days after enactment). Employers should contact their COBRA administrators to ensure that the new notices required under ARRA will be sent out timely and that the appropriate premiums will be collected from COBRA participants. Employers who fail to provide the subsidy notices will be subject to the same penalties that apply to regular COBRA notices.

If you have any questions, please call or e-mail any member of our Employee Benefits or Employment Group.

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