



By Christina Harris Schwinn

This article provides an overview only of the monetary assistance available to individuals who find themselves unemployed due to no fault of their own in connection with maintaining their health insurance through COBRA.¹

(1. COBRA is the acronym for the Consolidated Omnibus Budget Reconciliation Act of 1985 which amended the Employee Retirement Income Security Act of 1974 ("ERISA") which governs employee benefits and retirement plans.)

Effective March 1, 2009, individuals who are unemployed due to no fault of their own and their termination of employment occurred between September 1, 2008 and December 31, 2009 may be eligible for monetary assistance to defray the cost of the insurance premiums associated with COBRA. COBRA is the federal legislation that provides for continuation of health insurance benefits post termination of employment.

Among other provisions contained in The American Recovery and Reinvestment

THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Act of 2009 ("ARRA"), eligible terminated employees will be entitled to receive a reduction in premium up to 65% and the terminated employee's employer will be eligible for a credit against the employment taxes it pays in an amount equal to the credit against premium in favor of the employee. The maximum period of time an individual would be eligible for this monetary assistance is 9 months. The person's eligibility ceases when the individual becomes eligible to enroll in a new employer's plan.

The effective date of the legislation is March 1, 2009. However, there is a retroactive aspect to this legislation. The retroactive aspect extends to individuals who first became unemployed on or after September 1, 2008. While the eligibility period extends back to September 1, 2008, the subsidies do not and are only available beginning March 1, 2009 forward.

The ARRA provides that an additional special election period be made available to terminated employees who lost their jobs through no fault of their own during the relative period that such individual had been offered COBRA continuation benefits but declined to elect to receive them when the individual first became eligible.

The U.S. Department of Labor ("DOL") has been charged with the responsibility of developing updated COBRA election

forms and issuing rules and regulations to implement the ARRA within 30 days of the date the legislation was enacted which was February 17, 2009.

The ARRA imposes obligations on employers to do the following:

- Modify their COBRA continuation notices;
- Notify employees of their rights under ARRA;
- Identify individuals whose employment was terminated due to no fault of their own back to September 1, 2008;
- Notify terminated employees of the availability of this premium assistance;
- Allow terminated employees to elect COBRA during a special election period even if the terminated employee did not elect continuation coverage when he or she became eligible or elected coverage and then ceased making the premium payments;
- Under certain circumstances, allow a terminated employee to elect a different coverage plan provided that the one being elected does not have a premium cost that is more than the coverage plan the terminated employee was previously enrolled in;
- Update employee benefit policies relating to COBRA; and
- Review existing policies.

Once the DOL has revised its model COBRA continuation form, it should be available on the DOL's Website which is www.dol.gov. If the DOL meets its deadline, the form should be available on the DOL's Website when this article is published in the April issue of the BIA newsletter. Note that, while the model COBRA notice published by the DOL will satisfy one of the obligations imposed on employers, it will do little to satisfy the other obligations imposed by the legislation.

As is the case with most federal legislation, there are complex technical aspects to this legislation. Questions regarding specific compliance requirements should be referred to professionals, including legal counsel who are experienced with employee benefit plans and matters.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice.

Questions regarding the content of this column or past columns may be e-mailed to Christina Harris Schwinn at christinaschwinn@paveselaw.com. To view past columns written by Ms. Schwinn please visit the firm's website at www.paveselaw.com. Ms. Schwinn is an experienced employment law attorney with the Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 336-6228; Telecopier: (239) 332-2243.

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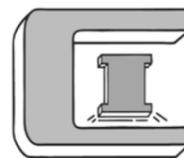
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