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Yet Another Stopgap: COBRA Extension Presents Administrative Challenges (Expect More)

by Arthur T. Phillips

As we have reported, the American Recovery and Reinvestment Act of 2009 (ARRA) provides that certain assistance eligible individuals (AEIs) who lost group health coverage as a result of an involuntary termination of employment through February 28, 2010 (previously extended from December 31, 2009) pay only 35% of their COBRA premiums for up to 15 months (originally 9 months). The remaining 65% is reimbursed to the employer/health insurance provider through an employment tax credit. (See WHD Employee Benefits Special Reports – “Constant Change: COBRA Subsidy Extended/New Self-Reporting Obligations [January 2010]”; and “Recovery Act Enhances COBRA Benefits to Laid-Off Employees [February 2009]” for additional information on the COBRA subsidy.)

On March 2, 2010, the ARRA was amended by the Temporary Extension Act of 2010 (Extension Act). To qualify under the Extension Act, individuals must experience a COBRA qualifying event between September 1, 2008 and March 31, 2010 that is either (1) an involuntary termination of employment, or (2) a reduction in hours followed by an involuntary termination of employment between March 2, 2010 and March 31, 2010.

Recent informal guidance of the Employee

Benefits Security Administration of the Department of Labor (EBSA) indicates that the Extension Act offers a second chance to certain AEIs to elect COBRA and obtain the premium reduction. The premium reduction is not retroactive, however, nor does it extend the COBRA coverage period. Consequently,

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certain AEIs may receive partial or no subsidized COBRA benefits.

Employers need to commence the process of identifying and notifying AEIs. COBRA notices and other employee communication

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materials describing the ARRA or the Extension Act should be discussed with experienced employee benefits counsel. The EBSA has released revised updated model notices which can be found at <http://www.dol.gov/ebsa/cobramodelnotice.html>.

On March 10, 2010, the Senate passed House-approved H.R. 4213, which extends the premium reduction through December 31, 2010. We are following this and other legislative proposals relating to additional extensions and will provide alerts with each new development.

For more information, please contact Arthur Phillips at (414) 978-5382 or aphillips@whdlaw.com, or another member of the Employee Benefits or Human Resources Law practice groups.

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