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MEMORANDUM

TO: All Employers

FROM: Jennifer McClain

DATE: February 21, 2009

RE: New COBRA Subsidy

New COBRA Subsidy

On February 17, 2009, the President signed the stimulus package, H.R. 598, which includes an expansion of COBRA benefits under the Health Insurance Assistance for the Unemployed Act of 2009. A COBRA subsidy will assist certain unemployed workers with the cost of COBRA insurance and put a new administrative burden on employers.

COBRA Summary

Continuation health insurance coverage provided under employer-sponsored group health plans is regulated under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"). The new regulation creates a taxpayer-funded subsidy to pay for 65% of COBRA costs for people who are involuntarily terminated between September 1, 2008, and December 31, 2009, for 9 months or until the former worker is offered new employer coverage.

Eligibility

A terminated employee is eligible for the subsidy if the employee earned an annual taxable income of less than \$125,000 for an individual or \$250,000 for a couple, was involuntarily terminated between September 1, 2008, and December 31, 2009, and was eligible for COBRA during that period and elected such coverage or now elects COBRA during a new special election period. The special election period began on February 17, 2009 and will end 60 days after the plan administrator sends out the newly required notice of the special election period. This means that the special election group will have a new 60-day window in which to elect COBRA continuation coverage that will be effective with the first period of coverage beginning on or after February 17, 2009. The subsidy will generally apply to premiums paid for periods of coverage beginning on and after March 1, 2009.

Exceptions

The subsidy applies to group health plans, but does not apply to plans that provide only dental, vision, counseling or referral services or health care flexible spending arrangements.

Reimbursement of Group Health Plans

The employer will pay the subsidy and may recover the cost from the federal government through a credit against the employer's federal payroll taxes or through a direct payment from the government.

Notice Requirements

There are two new notice requirements for employers. All new COBRA eligible participants that will be involuntarily terminated between now and December 31, 2009 must be given a notice regarding the subsidy provisions. A new COBRA notice must be sent to any employee who was previously involuntarily terminated after September 1, 2008 re-offering a COBRA election, along with a notice of the subsidy. The regulation requires the Department of Labor and other agencies to coordinate efforts to prepare model notifications within the next 30 days.

Next Steps

Employers should determine which employees were involuntarily terminated after September 1, 2008 to determine who will be eligible for the new COBRA notice. Employers should work with their health plan administrator to amend their current COBRA notice to include the subsidy information and notify the eligible employees. Employers should also establish and implement administrative procedures to ensure compliance with the new COBRA provisions.

For more information about the COBRA subsidy, contact Jennifer McClain at Jennifer@mrjlaw.net or any of our attorneys at (714) 972-2333.