

January 6, 2010

The Employee Benefits Group at Murtha Cullina is pleased to provide clients and friends with information about topics of interest in the employee benefits area.

If you have any questions about the issues addressed here, or any other matters involving employee benefits issues, please feel free to contact the following attorneys:

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COBRA SUBSIDY PROGRAM UPDATE

The COBRA subsidy program that began with the American Recovery and Reinvestment Act (“ARRA”) has been extended as part of the Department of Defense Appropriations Act, 2010 (“DOD”) signed by President Obama on December 19th. Under the subsidy program, the federal government indirectly covers 65% of the cost of continuation coverage premiums for assistance eligible individuals (“AEIs”). Here are the changes:

- Under the original program, the subsidy was available only to those who lost coverage due to involuntary termination of employment between September 1, 2008 and December 31, 2009. The new law extends this period until February 28, 2010.
- ARRA is amended to provide that the worker need not have lost coverage by February 28, 2010. If the worker is involuntarily terminated by that date, that is sufficient even if coverage is lost sometime later (e.g., on March 1, 2010).
- The subsidy period was originally limited to nine (9) months; the subsidy is now available for up to fifteen (15) months, including those for whom it ended or would have ended on November 30 or December 31. However, DOD does not extend the maximum period of COBRA continuation coverage.
- AEIs whose subsidy has already expired and who dropped coverage rather than pay the full premiums will be able to retroactively pay their 35% share of premiums for the months they lacked COBRA and resume their coverage. The deadline for paying back premiums (at the reduced rate of 35 percent) ends on February 17, 2010 (60 days after enactment) or, if later, 30 days after receiving notice of the extension. For those who continued to pay for coverage at full rates after the nine month subsidy ended and who have “overpaid” their premiums, employers may offset future COBRA premiums or issue refunds.
- Any individual who was eligible for the ARRA COBRA subsidy on or after October 31, 2009, or who is voluntarily or involuntarily terminated on or after that date, must be provided a notice with information regarding the subsidy extension.

This notice must be provided no later than February 17, 2010. Notices to those who become eligible for the COBRA subsidy after December 19, 2009 must be given in accordance with the timing under general notification rules of COBRA.

- Any individual who was eligible for the ARRA COBRA subsidy, but either was dropped from coverage for failure to pay the full COBRA premium or who paid the full COBRA premium after they exhausted their ARRA COBRA subsidy, must be provided with information regarding the extension of the COBRA subsidy and the right to make retroactive premium payments at the federally subsidized rate, or their right to a credit or refund, as the case may be. This notice must also generally be provided by February 17, 2010. However, it appears that for individuals for whom the subsidy has ended prior to December 19, 2009, the notice must be provided within sixty days of the date the subsidy is lost (January 29, 2010, if the subsidy is lost on December 1, 2009).

In light of the changes, plan sponsors and administrators will need to issue notices about the COBRA subsidy extension and send them out in accordance with the foregoing, and existing notices concerning the COBRA subsidy will need to be revised. We understand that the Department of Labor (“DOL”) will shortly issue model notices for this purpose (as it did with ARRA). Plan sponsors and administrators will also need to develop a procedure for allowing individuals who terminated COBRA after the nine month subsidy ended to pay back premiums, and to develop a procedure for refunding excess premiums or crediting such excess premiums to future periods for those who paid the full premium after the nine month subsidy ended.

Stay tuned, as there may be additional subsidy changes early in the new year. An extension to June 30, 2010 has been proposed in pending legislation. If you have any questions, please contact Bill Keenan at (860) 240-6028 or wkeenan@murthalaw.com, or Liz Neuwirth at (203) 653-5411 or eneuwirth@murthalaw.com.