



dawn of a new arra: economic stimulus bill bringing change to cobra and unemployment insurance programs

MSK Client Alert

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On February 17, 2009, President Obama signed into law the highly anticipated economic stimulus package, the American Recovery and Reinvestment Act of 2009 ("ARRA"). While the \$787 billion measure contains a number of spending provisions in a variety of areas, employers should be aware of two key provisions immediately affecting terminated employees. First, ARRA creates a new 65% premium subsidy for employees who elect health care continuation coverage under the Consolidated Omnibus Reconciliation Act ("COBRA") and places new notice requirements upon employers as a result. Second, ARRA also allocates funds to extend unemployment insurance ("UI") for individuals and to modernize state UI administration systems.

The New COBRA Subsidy

COBRA - which applies to employers with twenty (20) or more employees - allows most involuntarily terminated employees to continue their group health benefits coverage for up to eighteen (18) months, at their own expense, by paying up to 102% of the full premium (including the employer's contribution) for coverage. Effective March 1, 2009, under ARRA, "assistance eligible individuals" will receive a subsidy, equal to 65% of the COBRA premium, for up to ninth months.

Eligibility

ARRA defines as "assistance eligible individuals" those former employees and dependants who have lost group health coverage as a result of an **involuntarily termination** from employment **occurring between September 1, 2008 and December 31, 2009**. (Thus, the subsidy will **not** be available to persons who lost or will lose coverage as a result of any other qualifying event, such as a reduction in hours, death or divorce.) Individuals who earn \$125,000 or more, and couples with combined annual earnings of \$250,000 or more, are **not**

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eligible for the subsidy.

Mechanics of Subsidy

As of March 1, 2009, assistance eligible individuals will only be required to pay 35% of the COBRA premium. The subsidy will continue for a maximum of nine months and will end if an assistance eligible individual becomes **eligible** for coverage under (rather than **enrolled in**) another employer's plan, or becomes Medicare-eligible. (ARRA also provides that beneficiaries who fail to notify the health plan of their eligibility for coverage under another plan or Medicare will be required to repay the government a penalty equal to 110% of the subsidy received.)

Employers will be reimbursed for the subsidy through payroll tax credits or direct payment from the Treasury. ARRA requires the Secretary of the Treasury to issue regulations "or other guidance" regarding the procedures for reporting subsidy payments and seeking reimbursement.

In addition, for employers that offer a variety of health benefit plans to their employees, ARRA also permits employers to offer assistance eligible individuals the option of switching to a lower cost plan offered to active employees. However, this provision is optional and employers are **not** required to make this option available to assistance eligible individuals. If an employer decides to offer this option, an assistance eligible individual must elect to change his or her health coverage within ninety (90) days of receiving the COBRA election notice.

New Notice Requirements for Employers

ARRA requires that employers' COBRA notices include information about the availability of the premium subsidy and the option (if offered) to enroll in a lower cost plan. While there is not yet a "model notice" for employers to follow, the Department of Labor is due to issue one within the next thirty (30) days. These new notices must be sent to any person who became COBRA eligible on or after September 1, 2008.

ARRA also requires employers to notify assistance eligible individuals **who initially declined COBRA coverage** that they have a renewed right to elect subsidized COBRA coverage. This means that if an employer involuntarily terminated any employees between September 1, 2008 and February 17, 2009 (the date of ARRA enactment) and those employees and/or their dependents declined COBRA coverage at the time of termination, the employer is now required to reach out to those employees, notify them of the new premium subsidy, the option (if offered) to enroll in a lower cost plan and to provide them with 60 additional days (from the receipt of notice) to decide whether they want to elect COBRA.

Unemployment Insurance

Expansion of UI Benefits

ARRA provides federal funding for a \$25 per week increase in unemployment benefits. Those receiving regular, extended, or emergency unemployment benefits will be eligible to receive the increased UI funds. To receive the



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federal money, states will be required to enter into an agreement with the Secretary of Labor to participate in the new benefits-expansion program.

Extension of Emergency Unemployment Insurance Program

The Unemployment Compensation Act of 2008, passed by Congress in November of last year, created an emergency program that extended federal unemployment insurance by thirteen (13) weeks for workers who had exhausted their twenty-six (26) weeks of regular unemployment benefits. ARRA extends this emergency program until December 31, 2009, nine months beyond its original expiration date of March 31, 2009. Additionally, ARRA authorizes the use of the Treasury's general fund, rather than the Federal Unemployment Tax Act (FUTA) surtax, to fund the UI benefits and administration costs under this program.

Modernization of State UI Administration Systems

ARRA also allocates \$7 billion to be distributed to the states, as an incentive to adopt reforms to their UI systems. Under this program, a state will receive one-third of its funding by having an "alternative base period" policy, which counts an individual's recent earnings when necessary to qualify the individual for UI benefits. (In a number of states, earnings during the most recent three to six months are not counted for purposes of determining eligibility - sometimes making it more difficult for seasonal and casual employees to receive UI benefits.) To qualify for the remaining two-thirds of the funding, a state will have to provide UI benefits to individuals in at least two of the following five situations: (1) individuals who leave work for compelling family-related needs, including illness of an immediate family member or domestic violence; (2) individuals seeking part-time work; (3) individuals laid off from a "declining" occupation who require extra unemployment benefits to participate in job training; (4) individuals who are long-term unemployed who fail to collect a full 26 weeks of benefits; and/or (5) individuals with dependents (children), who require increased benefits (a minimum of \$15 more per week).