

Employee Benefits & Executive Compensation Group

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Employee Benefits Alert

COBRA Premium Subsidies Offered As Part Of Stimulus Package

Effective March 1, 2009, the newly enacted stimulus legislation provides a government subsidy equal to 65% of certain COBRA costs. The premium assistance will be available for any COBRA-eligible individual who was involuntarily terminated between September 1, 2008 and December 31, 2009, and meets the income requirements described below. Generally, the assistance lasts until the earlier of nine months or the expiration of the maximum COBRA continuation coverage period.

The premium assistance is fully available for an individual with an adjusted gross income of up to \$125,000 and a joint tax filer with an adjusted gross income of up to \$250,000. It is phased out for persons earning more than those amounts. An individual may waive the right to receive a subsidy.

The legislation permits an employer to allow an assistance eligible individual to elect medical coverage that is different than coverage under the plan in which such individual was enrolled at the time of the qualifying event.

Any assistance eligible individual may elect COBRA coverage during the 60-day period beginning with the date such individual is provided with proper notice of the assistance availability. This extended election period will allow the qualified beneficiary to commence COBRA coverage as of the date of enactment.

The required additional COBRA notice must include any forms necessary for establishing eligibility for the premium reduction, contact information for the plan administrator, a description of any extended COBRA election period, a description of the obligation of the qualified beneficiary to notify the plan of subsequent coverage, a description of the right to a reduced premium and conditions on entitlement to the reduced premium, and a description of any option of the qualified beneficiary to enroll in different coverage.

The legislation provides for the employer to be "made whole" for the premium assistance provided to former employees. The employer will receive this subsidy in the form of reductions (*i.e.*, offsets) of payroll taxes otherwise payable. As a condition of receiving the subsidy, the legislation permits the government to require the submission of reports, including an attestation of involuntary termination of employment for each assistance eligible employee and a report of the amount of payroll taxes offset in accordance with the legislation.

To obtain assistance with implementation of this legislation, please contact one of the members of the Employee Benefits & Executive Compensation Group.

Ungaretti & Harris' Employee Benefits Group handles all aspects of employee benefit plan and executive compensation representation. We serve as general employee benefits counsel to numerous companies, and also serve as ERISA counsel to banks, trust companies, insurance companies, investment managers, and third-party recordkeeping firms. Please call any member of the Employee Benefits and Executive Compensation Group if you have questions regarding ERISA compliance.

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