

COBRA ASSISTANCE PURSUANT TO
THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (“Act”). Part of this 400-page piece of legislation addresses new changes to continuation coverage pursuant to COBRA. (The Consolidated Omnibus Budget Reconciliation Act or “COBRA” applies to employers who have 20 or more employees.) According to the Act, certain beneficiaries will be eligible for a 65% subsidy, or reduction, of their COBRA premiums for a maximum of 9 months. Otherwise stated, if an “assistance eligible individual” as defined below, pays 35% of their COBRA premium, they will be treated as having paid the entire premium. An “assistance eligible individual” is any qualified beneficiary who meets all three of the qualifying criteria:

1. Was eligible for COBRA continuation coverage at any time between September 1, 2008 and December 31, 2009;
2. Elected COBRA coverage during the original election period or who later elects during the special election procedure prescribed by the Act; and
3. Became eligible for COBRA because of an involuntary termination of employment during the period from September 1, 2008 through December 31, 2009.

According to the Act, (except for multi-employer plans) while the assistance eligible individual is responsible for 35% of the COBRA premiums; the remaining 65% of the COBRA premiums will be paid by the employer. The federal government will reimburse the employer for these subsidy amounts by offsetting the same against the payroll taxes the employer would have been required to deposit. Employers will be required to report to the Department of Labor specific information regarding such reimbursement amounts and the Department of Labor will issue appropriate guidance and procedures with respect to this requirement.

Technically, Employers must take necessary actions to provide the 65% subsidy to assistance eligible individuals beginning on March 1, 2009. However, because employers will practically be unable to timely notify assistance eligible individuals about the subsidy, such individuals can continue to make the full COBRA payments. However, the employer must credit the subsidized portion of such full payments against further premiums or refund the subsidized portions within 60 days of payment of the full premium amount

Also, if an individual was eligible to elect COBRA between September 1, 2008 and the enactment date, February 17, 2009, but did not elect COBRA coverage, such individual now may elect COBRA coverage within the 60-day period following the issuance of new notices describing these new legal changes. According to the Act, the Department of Labor shall provide model notices to assist employers with complying with these new notice obligations in mid-March 2009.

We continue to closely monitor this legislation. Upon issuance of additional forms and guidance, we will review such legal authority and advise clients of the same. Please contact a member of the Koley Jessen Employment, Labor and Benefits Group if you have additional questions. Also, plan to attend Koley Jessen’s webinar on this subject as described below.

CALIFORNIA EMPLOYER NOTICE REQUIREMENTS REGARDING INCOME TAX CREDITS

California employers are required to advise employees that they may be eligible to receive the Earned Income Tax Credit (“Credit”) from the federal government. This Credit is intended to reward low-income workers for seeking employment rather than utilizing public assistance such as welfare. Employers are required to notify employees that they are eligible for the Credit within one week before or after, or at the same time as the employer provides employees with a Form W-2 or Form 1099. Employers can provide the required notice by hand-delivery or by mailing the same to the employee’s last-known address. Please contact a member of the Koley Jessen Employment, Labor and Benefits Group if you have questions about this issue or if you would like assistance drafting the actual notice. This legislation became effective January 1, 2008.

UPDATE REGARDING EMPLOYEE FREE CHOICE ACT

The highly-publicized Employee Free Choice Act would allow the National Labor Relations Board to certify a union based on “card-checks” instead of conducting a secret ballot election which is currently required. In response to this controversial proposal, Republican lawmakers have proposed competing legislation referred to as the “Secret Ballot Protection Act” which would amend the National Labor Relations Act and make it an unfair labor practice for an employer to recognize a union unless such union was formally recognized after a secret ballot election. Koley Jessen’s Employment, Labor and Benefits Practice Group will keep you informed as this issue develops over the legislative session.

MARK YOUR CALENDARS TO ATTEND KOLEY JESSEN’S WEBINAR ON FRIDAY, MARCH 13, 2009

As a value-added benefit for our clients, Koley Jessen’s Employment, Labor and Benefits Group is pleased to present a webinar designed to assist employers in understanding and complying with the new requirements regarding COBRA continuation coverage as required by the American Recovery and Reinvestment Act recently signed by President Obama. During the webinar, Julie A. Schultz and Leilani M. Harbeck will explain the key changes for employers under the new regulations, detail the actions employers should be currently taking and address questions from attendees. This webinar will be held on Friday, March 13, 2009 from 11:30 a.m. to 1:00 p.m. and there is no charge for participants.

To register for the webinar, or submit questions in advance, please respond via email to employment@koleyjessen.com or contact Heather Boozikee at 402-343-3784. Once registered, additional information will be provided regarding the webinar. We hope you will take advantage of this opportunity.

The Koley Jessen Employment, Labor and Benefits Group:

Margaret C. Hershiser

402.343.3711

margaret.hershiser@koleyjessen.com

Joan M. Cannon

402.343.3753

joan.cannon@koleyjessen.com

Julie A. Schultz

402.343.3766

julie.schultz@koleyjessen.com

Richard D. Vroman

402.343.3810

richard.vroman@koleyjessen.com

Leilani M. Harbeck

402.343.3767

leilani.harbeck@koleyjessen.com

Ryan J. Sevcik

402.343.3859

ryan.sevcik@koleyjessen.com