

IRS ISSUES ADDITIONAL GUIDANCE RELATED TO COBRA SUBSIDY

As discussed in our prior *NewsFlashes*, the American Recovery and Reinvestment Act of 2009 (“Act”) was enacted on February 17, 2009, and provides for subsidized premiums and additional election opportunities for health benefits under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”). The Internal Revenue Service (“IRS”) has now issued additional guidance consisting primarily of a series of 58 questions and answers, along with examples, to assist employers in complying with the Act’s requirements.

Of particular note to employers, the IRS has provided explanation of what constitutes an involuntary termination. Determining whether a termination was involuntary is key for employers to decide whether an individual is an “assistance eligible individual” and entitled to the COBRA subsidy. (To be considered an “assistance eligible individual,” the individual must be a qualified beneficiary who: (1) was eligible for COBRA continuation coverage at any time between September 1, 2008 and December 31, 2009; (2) elected COBRA continuation coverage during the original election period or during the special election period under the Act; and (3) became eligible for COBRA because of an involuntary termination of employment between September 1, 2008 and December 31, 2009). For purposes of the Act, “[a]n involuntary termination means a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee’s implicit or explicit request, where the employee was willing and able to continue performing services.” An involuntary termination also can result from an employee-initiated termination from employment if it was “for good reason due to employer action that causes a material negative change in the employment relationship for the employee.”

Other issues discussed in the IRS’ guidance that may be especially relevant to employers include examples demonstrating the application of the COBRA subsidy if an assistance eligible individual is not required to pay the full cost, *i.e.*, 102 percent of the applicable premium, for continuation coverage due to severance arrangements or other circumstances. In these instances, “if the premium that would be charged the assistance eligible individual is less than the maximum COBRA premium, for example, if the employer subsidizes the coverage by paying all or part of the cost, the amount actually charged the assistance eligible individual is used to determine the assistance eligible individual’s 35 percent share.” Further explanation is also provided on how the COBRA subsidy is computed if the COBRA continuation coverage for one or more assistance eligible individuals also covers one or more individuals who are not assistance eligible individuals.

As it is impossible to discuss in depth all of the topics addressed in the IRS’ guidance, we encourage employers to review IRS Notice 2009-27, which is available at <http://www.irs.gov/pub/irs-drop/n-09-27.pdf> and discusses each of the following topics: Involuntary Termination; Assistance Eligible Individual; Calculation of Premium Reduction; Coverage Eligible for Premium Reduction; Beginning of Premium Reduction Period; End of Premium Reduction Period; Recapture of Premium Assistance; Extended Election Period; Payments to Insurers Under Federal COBRA; and Comparable State Continuation Coverage.

If you have questions about the Act, the IRS’ guidance or the COBRA subsidy, please contact a member of the Koley Jessen Employment, Labor and Benefits Group.

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