

## Economic Stimulus Package Includes Changes to Employment Laws

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The American Recovery and Reinvestment Act of 2009 (ARRA), signed by President Obama on February 17, 2009, includes two provisions of particular interest to employers. The ARRA adds a financial benefit to the right of employees to continue their health insurance coverage after the end of their employment, as an amendment to the Consolidated Omnibus Budget Reconciliation Act (COBRA). The Act also expands employees' privacy protections under the Health Insurance Portability and Accountability Act (HIPAA).

### COBRA Expansion

COBRA<sup>1</sup> requires that employers with 20 or more employees provide most employees and their beneficiaries with the opportunity to continue group health plan coverage after the end of the employment relationship. Although COBRA does not require that any employer provide health benefits to its employees, former employees and beneficiaries must be offered coverage that is the same as coverage of its current employees.

Under COBRA, an employee or a beneficiary can continue coverage under an employer's group health plan for 18 months after a qualifying event. Qualifying events for employees include:

- 1) Voluntary dismissal, such as a voluntary quit
- 2) Involuntary dismissal, if not for gross misconduct
- 3) Reduction of hours

Beneficiaries can also qualify under COBRA even if the employee was dismissed for gross misconduct.

The ARRA provides a 65% subsidy to help cover the expense of continuing health insurance coverage. This subsidy is available to COBRA-eligible employees who have been **involuntarily** terminated between September 1, 2008 and December 31, 2009. Unfortunately, the ARRA does not define "involuntary termination." The subsidy is also available for beneficiaries of a former employee. The subsidy is only available to those who meet certain income restrictions.<sup>2</sup>

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<sup>1</sup> 29 U.S.C. §§ 1161-1167.

<sup>2</sup> Modified adjusted gross income for same year of no more than \$125,000 (individual) or \$250,000 (family).

Employers should be aware that COBRA notices must be rewritten to include information about this subsidy.

The eligible former employee or beneficiary makes a reduced payment for coverage, and the provider of coverage receives the subsidy through a reduced payroll tax deposit. Former employees or beneficiaries are eligible for the subsidy for coverage periods beginning on or after February 17, 2009. Even employees who did not elect COBRA coverage or later dropped coverage can decide to take advantage of the COBRA subsidy, and must receive special notice of their right to do so. These employees have 60 days from the date of their special enrolment notice to decide to enroll with the subsidized premium.

### **HIPAA Changes**

HIPAA has always required that covered entities meet its privacy requirements. Covered entities generally included health plans and health care providers, but not employers. The ARRA expands the privacy requirements of HIPAA to include business associates, which are organizations which may receive health information from a health plan or a health care provider. Employers can be considered to be business associates if they receive health information in connection with health examinations, or requests for accommodations and family & medical leave.

HIPAA has always limited an employer's use and redisclosure of health information without an appropriate HIPAA release. As covered entities, employers will now be required to do the following:

- 1) Train staff on privacy of records
- 2) Designate a privacy officer
- 3) Notify employees of their rights
- 4) Implement safeguards to protect against disclosure of health information
- 5) Establish a complaint process
- 6) Create a system for documenting privacy policies

The ARRA also now requires that any covered entity (now including business associates) notify anyone whose health information has been released in violation of HIPAA's privacy rules. This notice must occur no more than 60 days following the discovery of the release.