

EMPLOYMENT LAW CLIENT E-ALERT

APRIL 2009

**UPDATE: STIMULUS PACKAGE PROVIDES NEW COBRA SUBSIDY
EMPLOYERS, BENEFIT PLAN SPONSORS, AND OTHERS MUST COMPLY
WITH NEW RULES**

For our employee benefits clients, we are continually updating our guidance for the new COBRA rules that were enacted on February 17 as part of the Stimulus package. Our March 2009 Client E-Alert, "[Additional Changes To Recently Enacted Cobra Rules and New Model Notices and Forms Issued](#)" summarized the changes to date. Since the March Alert, more changes have been made. This April 2009 E-Alert is an update. We will continue to monitor any subsequent changes and update you accordingly.

SUMMARY OF COBRA CHANGES TO DATE

The federal economic stimulus package, signed into law in February, requires employers and other benefit plan administrators, multiemployer plans, and insurance carriers to change their COBRA procedures and provide new COBRA election rights to employees and certain former employees and their family members.

The legislation and the accompanying Department of Labor and IRS rules are exceedingly complex. Employers, carriers, and multi-employer plans are advised to work closely with counsel to ensure compliance. Please contact [George L. Chimento](#) of our [Compensation and Benefits](#) practice to discuss next steps.

In brief summary, the legislation provides the following:

In General: The law reduces premiums for eligible individuals and provides them additional opportunities to elect health benefits under COBRA. Those eligible will pay only 35% of the usual COBRA premium. The remainder is reimbursed to the coverage provider by way of a federal payroll tax credit.

Employers Covered: COBRA applies to plans sponsored by employers with 20 or more employees. Note, too, that the laws in many states (Massachusetts among them) make similar requirements of small businesses.

Eligible Individuals: Individuals eligible for reduced premiums include anyone eligible for COBRA - an employee or a family member - from September 1, 2008 to December 31, 2009 who:

- elects COBRA coverage;
- is eligible for COBRA as a result of the employee's involuntary termination between the above dates; and
- is not eligible for other group health coverage (for example, Medicare or a spouse's plan).

Limits on reduction eligibility apply for those whose modified adjusted gross income exceeds \$125,000 (for married taxpayers, \$250,000). A phase-out begins at \$125,000 and no reduction is mandated for those with

AGI's of more than \$145,000 (\$290,000 for married taxpayers).

Premium Reduction Period: Premium reductions are available beginning on February 17, 2009 and continuing for up to nine months.

Involuntary Termination: This term is defined very broadly and includes those who resign because of a threatened layoff, seasonal employees, and those who leave rather than accept a relocation. It does not include employees terminated for gross misconduct or those who end employment status due to disability, a reduction in hours, or contract nonrenewal. Involuntary termination means employment termination, not involuntary termination of coverage.

"Second Chance" Opportunities: Employees who were involuntarily terminated from September 1, 2008 through February 10, 2009 and who did not elect COBRA initially - or elected it but are no longer enrolled - have a second chance to elect COBRA, for the original maximum period. Check with counsel as to state mini-COBRA "Second Chance" rules.

New Notice Requirements: Plan administrators must provide detailed notices to current employees and certain terminated employees and beneficiaries about the premium reductions. The DOL has prepared model notices that are available on-line.

Expedited Review of Denials: The DOL will grant expedited review of the denial to those denied assistance-eligible status (within 15 business days).

Payroll Tax Filing Files: Employers must adopt recordkeeping procedures noting premium reductions and should include the tax credit on their payroll tax returns.

For those that self-administer COBRA or need more details about the subsidy because you anticipate layoffs, want to design compliant severance agreements, or want to be sure you are reporting correctly to IRS, a comprehensive article by [George L. Chimento](#) concerning this subsidy is available [here](#).

CONTACT

If you have any questions about this Alert or [Mr. Chimento's](#) article, please contact him at (617) 589-3847 or gchimento@davismalm.com.

See our latest Employment Law Newsletter: [March 2009 Employment Law Client E-Alert: Additional Changes to Recently Enacted Cobra Rules and New Model Notices and Forms Issued](#)

See our other Employment Law publications: [Employment Law Articles, Alerts, and Newsletters](#)

See our Compensation and Benefits publications: [Compensation and Benefits Law Articles, Alerts, and Newsletters](#)

This article is provided as a courtesy and may not be relied upon as legal advice, or to avoid taxes and penalties. Distribution to promote, market, or recommend any arrangement or investment to avoid or evade taxes, including penalties, is expressly forbidden. Any communication with the author as to its contents, does not, of itself, create a lawyer-client relationship. Under the ethical rules applicable to lawyers in some jurisdictions, this may be considered advertising.

One Boston Place, Boston, Massachusetts 02108 | phone 617.367.2500 | fax 617.523.6215 | info@davismalm.com.

© 2002-2009 Davis, Malm & D'Agostine, P.C. All Rights Reserved. Attorney Advertising: Prior results do not guarantee a similar outcome. Please read our Disclaimer.