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## **COBRA and ECONOMIC STIMULUS BILL – UPCOMING DEADLINES FOR EMPLOYERS**

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009, the Stimulus Bill. The COBRA provisions of the Stimulus Bill provide for an employer subsidy of COBRA premiums for involuntarily terminated employees. These provisions have a substantial impact on employers' on-going obligations under COBRA. This email alert sets out certain key elements and deadlines under the COBRA provisions of the Stimulus Bill so employers can meet their obligations.

### **How the Subsidy Works**

Eligible Individuals will only be required to pay 35% of his or her COBRA premium. Previously, employees had been required to pay the full cost. The remaining 65% of the COBRA premium will be subsidized by the government through a payroll tax credit to the employer. The Secretary of Treasury will issue guidance on how a claim for a tax credit will be filed. If the payroll tax credits are insufficient to cover the COBRA expense, then the employer entitled to the reimbursement will receive the remainder of the reimbursement directly from the Secretary of the Treasury.

### **Eligible Individuals**

An Eligible Individual is a person who becomes eligible for COBRA between September 1, 2008 and December 31, 2009 due to a covered employee's involuntary termination of employment. The subsidy applies to spouses and dependents who are eligible for COBRA coverage as well.

### **Income Limitations**

The full subsidy is available only for individuals with a modified adjusted gross income of up to \$125,000 (\$250,000 for joint filers) or less for the taxable year in which the subsidy is received. If a subsidy is provided with respect to an individual who is not eligible, that individual's income tax liability is increased by the amount of the subsidy.

### **Special Election Period**

By April 20, 2009, the employer must allow individuals who were involuntarily terminated between September 1, 2008 and February 16, 2009 and who had not elected COBRA to reconsider their election. If such individuals elects COBRA during this special election period, coverage shall commence with the first period of coverage beginning after February 17, 2009 and will not go beyond the period of COBRA coverage that would have been required if COBRA had been initially elected.

## **Lower Cost Health Plans**

Generally under COBRA, qualified beneficiaries can only elect to continue the coverage that they had immediately before the qualifying event (i.e. termination or reduction of hours).

The Stimulus Bill now allows Eligible Individuals to elect a lower cost health plan option available under the employer's plan. This option is only available if the coverage is not (a) dental, vision, counseling or referral sources; (b) a flexible spending arrangement; or (c) coverage for services or treatment furnished in an on-site medical facility maintained by the employer that consists primarily of first-aid services, prevention and wellness care.

## **Notice Requirements**

By March 16, 2009, employers must update their COBRA notices to contain additional information about the availability of the subsidy, the availability of lower costs health plan options, the obligation of a qualified beneficiary to notify the plan of eligibility under another plan, and the penalty for failure to provide this notice.

## **Effective Date**

The subsidy applies to premiums paid for periods of COBRA coverage beginning on or after February 17, 2009.

## **Duration of Subsidy**

The subsidy will be available to Eligible Individuals for 9 months, but not beyond the end of the maximum period of coverage required under COBRA or the Eligible Individual becoming entitled to coverage under another group health plan or Medicare.

The subsidy is intended to be a temporary form of assistance for workers losing their jobs due to the economic downturn from September 1, 2008 through December 31, 2009 but . . . stay tuned to see if the mandate is extended.

Employers who had previously elected to pay all or part of a COBRA premium as part of an employee's severance package *may* now be able to take advantage of the federal tax credit for these COBRA payments, but it is currently unclear if that is the case.

If you have any additional questions or would like us to assist your company with any of the steps to comply with the Act, please do not hesitate to contact William Mandell, Esq. at [bill@piercemandell.com](mailto:bill@piercemandell.com) or Emily Kretchmer, Esq. [emily@piercemandell.com](mailto:emily@piercemandell.com) at Pierce & Mandell, P.C. (617-720-2444).