President Signs Law Extending & Expanding AARA COBRA Subsidy Rules

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Employer and union sponsored group health plans, their sponsors and administrators must act quickly to comply with the extension and expansion of temporary "COBRA Subsidy Rules" for "assistance eligible individuals" originally added to the group health plan medical coverage continuation requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") by the American Recovery and Reinvestment Act of 2009 ("AARA") last February.

The Department of Defense Appropriations Act (H.R. 3326) signed into law by President Obama on December 19, 2009 extended the period that employer and union-sponsored group health plans must allow employees and members of their family that lose group health plan coverage due to an involuntary employment loss to continue their group medical coverage under the reduced premium and other temporary ARRA COBRA Subsidy Rules and lengthened the period during which an involuntary employment loss can qualify an otherwise COBRA-eligible employee or dependent as an assistance eligible individual.

Original COBRA Subsidy Rules

As originally enacted, the ARRA COBRA Subsidy Rules limited the COBRA premium that a COBRA-covered group health plan could charge a COBRA-eligible employee or dependent whose group health plan eligibility ended due to an involuntary employment loss between September 1, 2008 and December 31, 2009 ("assistance eligible individual") to 35% of the otherwise applicable COBRA premium (the "Reduced ARRA Premium") for a period of up to 9 months (the "Subsidy Period"). ARRA dictated that employers sponsoring these group health plans must pay the remaining 65% of the COBRA premium (the "COBRA Subsidy") for the assistance eligible individual during the Subsidy Period, but allowed employers to seek reimbursement by claiming a payroll tax credit for these COBRA Subsidy payments by complying with applicable IRS procedures. AARA also mandated that group health plans offering a choice of coverage options offer assistance eligible individuals the option to switch coverage options and required group health plans to notify assistance eligible individuals of the special COBRA Subsidy Rules.

H.R. 3326 COBRA Subsidy Rules Extension

As signed into law on December 19, 2009, H.R. 3326:

- Extends the period during which an involuntary employment loss can qualify an otherwise COBRA-eligible employee or dependent as an assistance eligible individual for an additional two months (from December 31, 2009 to February 28, 2010);
- Adds an additional six months (from 9 to 15 months) the Subsidy Period during which an assistance eligible individual experiencing an involuntary loss of employment between September 1, 2008 and February 28, 2010 is entitled to pay the Reduced AARA Premium;

- Requires group health plans to notify assistance eligible individuals of the extension; and
- Requires group health plans to allow additional time for assistance eligible individuals who had exhausted their original 9-month Subsidy Period before H.R. 3326 extended the Subsidy Period to 15 months to pay the Reduced AARA Premium related to the extension.

Group health plans, their employer or union sponsors, administrators, insurers and service providers will need to act quickly to prepare and provider required updated notifications to assistance eligible individuals of these extended eligibility periods and their resulting rights, and otherwise update their plan documents, procedures, and COBRA notifications in light of these new rules.

If you have questions about or need assistance evaluating, commenting on or responding to these or other employment, health or other employee benefit, workplace health and safety, corporate ethics and compliance or other concerns or claims, please contact the author of this article, Curran Tomko Tarski LLP Labor & Employment Practice Group Chair Cynthia Marcotte Stamer. The author of the "Health Plan Eligibility Toolkit," Ms. Stamer is experienced with assisting employers, insurers, administrators, and others to design and administer group health plans cost-effectively in accordance with COBRA and other applicable federal regulations as well as well as advising and defending employers and others against tax, employment discrimination and other labor and employment, and other related audits, investigations and litigation, charges, audits, claims and investigations by the IRS, Department of Labor and other federal and state regulators.. Chair of the American Bar Association RPTE Employee Benefits & Other Compensation Group, a representative to the ABA Joint Committee on Employee Benefits Council, past Chair of the ABA Health Law Section Managed Care & Insurance Interest Group and Board Certified in Labor & Employment Law by the Texas Board of Legal Specialization, Ms. Stamer has advised and represented employers on these and other labor and employment, compensation, employee benefit and other personnel and staffing matters for more than 22 years. Ms. Stamer also speaks and writes extensively on these and other related matters. For additional information about Ms. Stamer and her experience or to access other publications by Ms. Stamer see **here** or contact Ms. Stamer directly. For additional information about the experience and services of Ms. Stamer and other members of the Curran Tomko Tarksi LLP team, see **here**.

Other Information & Resources

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Labor Department To Expand Employee Benefits, Wage & Hour, OSHA & Other Reporting & Disclosure Requirements & To Implement Other New Employee Benefit Regulations

Preventive HR Strategies to Minimize Post Holiday Celebration Legal Hangovers
IRS Publishes Table For Determining Qualified Plan Covered Compensation for Purposes of Code § 401(l)(5)(E)
PBGC Expands Pension Benefit Protection For Military Service Members As Justice Department Files 22nd USERRA Military Leave Lawsuit Against An Employer Since January
Rising Defined Benefit Plan Underfunding & Changing Rules Create New Obligations & Risks For Business
Justice Department Suit against MasTec Advanced Technologies For Violating Army Reserve Member's Rights Highlights Expanding Employer Military Leave Risks & Liabilities
Employer H1N1 Virus Risk Management Requires Employer Care To Manage Virus Risks Without Violating Employment Discrimination or Other Laws
New GINA Genetic Information Based Employment Discrimination & Confidentiality Mandates Take Effect
SHRM Urges American's To Oppose HR 3962, The Affordable Health Care For America Act
Businesses Cautioned To Strengthen Investigation & Employment Practices To Minimize Potential Exposure To Retaliation Claims In Light Of Recent Supreme Court Retaliation Decision
OFCCP To Apply Special Procedures, Heightened Scrutiny To Equal Employment Practices of Government Contractors, Subcontractors On ARRA Funded Projects
US and UK Agree to Share Information & Cooperate On Pension Security As US Defined Benefit Plan Sponsors Face Tough New Defined Benefit Plan Funding Requirements
Congress Considering Extending & Expanding Group Health Plan COBRA Subsidy Mandates On Heels of Enactment of Expanded Military Leave-Related Family Leave Mandates
EEOC Prepares To Broaden "Disability" Definition Under ADA Regulations
Tighten Employment, Ethics & Internal Controls Policies & Practices To Minimize DOJ & Other Antitrust Exposures
OSHA Final Rule Updates OSHA Personal Protective Equipment Standards
"Disability" Definition Not Retroactive, Employer Action Needed To Manage Post 1/1/2009 Risks

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