

Client Alert: Employers Must Pay a Portion of COBRA Premiums for Eligible Employees

President Obama's economic recovery program, titled the American Recovery and Reinvestment Act of 2009, enacted on February 17, 2009 ("ARRA"), makes significant changes to COBRA, which will affect an employer with 20 or more employees and require the employer's immediate attention. The ARRA COBRA provisions apply to employees (and their spouses/covered dependents) who are:

- covered under a group medical plan, eligible for COBRA; and
- involuntarily terminated between September 1, 2008 and December 31, 2009.

Employers Must Advance 65% of COBRA Premiums for Involuntarily Terminated Former Employees

Commencing March 1, 2009, employers will be required to advance 65 percent of the portion of any COBRA payments which terminated employees would otherwise pay for up to nine months for eligible employees. Employers will be reimbursed advanced premiums through a credit on their payroll tax return and, if additional monies are needed, from the Treasury.

Employers will not have to advance COBRA premiums for employees who leave voluntarily, are terminated for gross misconduct, who become eligible for other group health coverage (such as a spouse's or new employer's plan) or qualify for Medicare. A qualified beneficiary paying a reduced premium must notify the employer in writing if they become eligible for coverage under another group health plan or Medicare.

Former employees with income in excess of \$125,000 (\$250,000 for joint filers) may elect out of the program. If they fail to do so, the employer advance will be taxable to them.

Notice Requirements and Special COBRA Election

Employers must notify eligible former employees of the premium advance program, whether they have elected COBRA coverage or declined it. Eligible former employees who declined COBRA coverage before ARRA will have a special 60 day enrollment period from receipt of the employer notice to elect COBRA. The new election will not extend a terminated employee's COBRA coverage period, which runs from the date of termination (generally 18 or 36 months depending on the qualifying event). The employer's payment obligation begins on the date of enactment and does not include any period prior to that date.

For example, if an employee was terminated on September 10, 2008, the reduced premium payment would begin as of February 17, 2009 and would not include any period prior to the enactment date, provided the terminated employee elected COBRA initially or during the special enrollment period. The COBRA period would not be extended, but would run from September 10, 2008.

The U.S. Department of Labor is expected to provide model language for the notification required under ARRA by March 17, 2009.

If you have any questions regarding this Client Alert, please contact **Kimberly Klein** at 212.554.7853 or at kklein@mosessinger.com or **Steven J. Glaser** at 212.554.7820 or at sglaser@mosessinger.com:

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