

**February 17, 2009**

## **Obama Signs Economic Stimulus Bill**

President Obama signed the \$787 billion American Recovery and Reinvestment Act into law Tuesday, February 17, calling it “the most sweeping economic recovery package in our history”

The legislation includes provisions affecting COBRA as it applies to group health plans, including fully insured and self-funded health plans.

### **What does the Act do?**

The Act allows certain income eligible individuals to apply for premium assistance to offset the cost of COBRA continuation coverage. In order to qualify, the individual must involuntarily lose their employment (for reasons other than gross misconduct) between September 1, 2008 and December 31, 2009. Involuntary reduction in hours would not qualify the individual for the subsidy. In addition, in order to be eligible for the subsidiary, an individual's annual income must be less than \$125,000 if single or \$250,000 if filing a joint tax return.

### **Some key highlights of the Act are:**

- *COBRA Premium Subsidy.* For any individual that involuntarily loses their employment between September 1, 2008 and December 31, 2009, and otherwise qualifies for COBRA coverage, the individual will only be required to pay 35% of their COBRA premium until the *earliest* of (i) 9 months after the first day of the first month he/she is eligible for COBRA, (ii) the first day he/she is eligible for coverage under any group health plan or Medicare or (iii) the date following expiration of the COBRA period. The remaining 65% of the COBRA premium will be subsidized by the federal government by treating the remaining balance as a credit against the employer's payroll taxes. Plan Sponsors will be responsible for submitting reports detailing the amount of the credit to which they are entitled, as well as an estimate of any future credit they believe they may be entitled to at a later date.
- *Special election period.* The Act would allow those individuals who involuntarily lost their employment on or after September 1, 2008, but who did not elect COBRA, to subsequently elect COBRA during a 60-day election period. The 60-day period is calculated from the date notification is given to the individual about his/her entitlement to this special election period.

However, the Act does not provide that coverage will be reinstated retroactively to the date of the qualifying event and also does not extend the individual's maximum COBRA coverage. For example, if an individual, who involuntarily lost his/her job on September 1, 2008, was initially eligible for 18 months of coverage and initially did not elect COBRA, but after 6 months has decided to take advantage of this special election period, the individual would only be eligible for the remaining 12 months of COBRA coverage and not the full 18 months.

Any employee who elects coverage under this special election period must be allowed to either elect the same COBRA package they would have had at the time their employment terminated or, subject to employer approval, they may elect a different COBRA package provided that package is offered to active employees and the COBRA premium would not exceed the premium elected at the time of termination.

- *Pre-existing condition exclusions may not be imposed.* The Act provides that, for any person who wishes to take advantage of the above-mentioned special 60-day enrollment period, a group health plan may not impose a pre-existing condition exclusion even if there has been a 63-day or more break in coverage from the date of the qualifying event until the date of enactment of the Act.

- *Added notification requirements.* The Act imposes both notification requirements on the employee and employer as follows:
  - An individual receiving a subsidy must notify the employer in writing when he/she becomes eligible for other group health plan coverage. An individual who does not notify the employer may face a penalty of up to 110% of premium reduction.
  - Employers and COBRA Administrators must update their COBRA notices with information regarding the subsidy, as well as provide a notice to any employee who involuntarily lost their job on or after September 1, 2008, and who did not elect COBRA, advising them of the special election period discussed above. Employers have 60 days from February 17, 2009, to notify individuals of the special election period and employees have 60 days more days after receiving the notice to elect coverage. Model Notices are to be issued by the Secretary of Labor within 30 days after enactment of the Act.
  
- *Regulations.* The Act allows the Secretary of Labor to promulgate regulations or other guidance as needed.

#### **When will the Act go in effect?**

The Act will go into effect March 1, 2009.

#### **How does the Act impact me as an employer?**

If you administer COBRA on behalf of your health plan, you will have to update your COBRA forms and other plan materials to reflect the above requirements. In addition, it is recommended that you promptly begin to identify those individuals who **involuntarily** lost employment (other than for gross misconduct) from September 1, 2008 until now, so that you can send the required notices discussed above.