

Tuesday, February 17, 2009

## Labor and Employment Update: Cobra Premium Assistance After the Stimulus Bill

By Erwin D. Kratz

President Barack Obama signed the economic stimulus bill into law on Tuesday February 17, 2009. The bill contains premium assistance for COBRA qualified beneficiaries who are involuntarily terminated between September 1, 2008 and December 31, 2009. Employers that sponsor group health plans need to change their COBRA administration practices to comply with the new law.

This alert summarizes the new law and what you need to do to comply. You are also invited to register for our free webinar "COBRA Premium Assistance After the Economic Stimulus Bill" on Wednesday, February 25, 2009. To register please click on the link below.

<http://www.fclaw.com/seminar/?id=598>

Once you have successfully registered, you will receive an email confirmation with instructions for logging onto the webinar at noon on February 25th.

### Premium Assistance

Under the new COBRA premium assistance benefit, an "Assistance Eligible Individual" pays 35% of their normal COBRA premium. The employer pays the other 65% of the premium and is entitled to reimbursement of this amount from the federal government. Assistance applies as of the first period of coverage beginning on or after date of enactment (February 17, 2009).

### Eligibility

Qualified beneficiaries who were or are eligible for COBRA are eligible for the premium assistance if they are involuntarily terminated from employment between September 1, 2008 and December 31, 2009 and subsequently elect COBRA coverage. Therefore, not all COBRA beneficiaries are eligible for assistance (such as, for example, people who voluntarily resigned.)

### Extended Election Period

Individuals who are eligible for assistance and were offered COBRA after September 1, 2008 and have not elected COBRA yet get a one-time new election period starting on the date the stimulus bill is enacted and ending 60 days after the individual receives notice from the employer of the new election right.

COBRA coverage for these individuals will begin as of the first period of coverage starting after February 17, 2009 (March 1, 2009 in most cases).

### Optional Plan Enrollment Change

Employers may (but are not required to) permit Assistance Eligible Individuals to enroll in a less expensive coverage option under the Plan, subject to certain restrictions.

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## Premium Assistance Ends

Premium assistance lasts a maximum of nine months. An individual is not eligible for premium assistance (and must notify the employer) once they become eligible for Medicare or another group health plan. Note, an individual who is eligible for, but does not enroll in, another group health plan, is eligible for COBRA coverage, but not for COBRA premium assistance. An individual who loses eligibility for premium assistance has a duty to notify the employer, and is subject to DOL penalties for failure to do so.

## Notice Requirements

Going forward, COBRA election notices must include notice of availability of premium reduction; forms for establishing eligibility for premium reduction; a description of the obligation to notify the employer of loss of eligibility for the assistance; and notice of the option to enroll in different coverage (if elected). Notice of the extended election period must also be given within 60 days of enactment to Assistance Eligible Individuals who became entitled to COBRA before the date of enactment. Failure to provide this additional notice within 60 days will be treated as a failure to provide the initial COBRA election notice, which will extend the qualified beneficiary's election period. The new notices can be incorporated into existing COBRA notices or can be stand alone notices. The Department of Labor is instructed to provide model notices within 30 days after the stimulus bill is enacted.

## Reimbursement for Premium Assistance

Employers are reimbursed for the premium assistance by claiming a credit against its payroll taxes owed (wage withholding payments and FICA tax payments). Payroll tax is considered paid on the date the Assistance Eligible Individual's reduced COBRA premium is received. Employers will need to be careful in claiming the credit because an overstatement of the reimbursement amount will be treated as an underpayment of payroll taxes.

## Reporting Requirements

An employer entitled to reimbursement will be required to file a detailed report with the U.S. Treasury regarding reimbursement, including an attestation as to involuntary termination for each employee for whom reimbursement is claimed; the amount of payroll taxes offset for the reporting period; taxpayer identification numbers of all covered employees; the amount of subsidy reimbursed with respect to each employee; whether the subsidy reimbursement was for single coverage or coverage for 2 or more individuals; and an estimate of offsets for the subsequent reporting period. The reporting period and form of report has not been determined yet.

## Join Our Webinar on Wednesday, February 25, 2009 to Learn More

Join us on Wednesday, February 25, 2009 from 12 p.m. to 1 p.m. MST for a free webinar to learn more about what you need to do to comply with the new COBRA premium assistance requirements, including:

- Identifying who you have terminated involuntarily since September 1, 2008
- Whether to Allow Assistance Eligible individuals to enroll in a less expensive coverage option under your Plan
- Generating and distributing the new COBRA notice and forms to establish eligibility for premium assistance
- Developing procedures to administer COBRA premium assistance, including adjusting premium notices when premium assistance ends and what to do if an Assistance Eligible Individual pays 100% of the COBRA premium in the first or second coverage period after the new law is enacted
- How premium assistance is treated for tax purposes
- How the new election right affects the 63 day pre-existing conditions exclusion period under HIPAA.
- Developing procedures to efficiently manage your reimbursement claims
- What to do if you have former employees for whom you have already agreed to pay COBRA premiums

# Need to Know

*Erwin D. Kratz practices primarily in the areas of ERISA and employee benefits law including qualified pension and profit sharing plans, non-qualified deferred compensation plans, cafeteria plans and welfare benefit plans. He received his B.S. (1987) from Southern Illinois University at Carbondale, his M.S. (1991) and his J.D. (1999) from the University of Arizona.*

*Cynthia L. Shupe practices primarily in the areas of pension and profit sharing, executive compensation, employee health benefits, taxation, tax planning for retirement accumulations, and benefits issues in commercial transactions. She has considerable experience in numerous areas of employee benefits, including tax qualified plans, ESOPs, multiemployer pension plans, ERISA, welfare benefit trusts, non-qualified deferred compensation, executive compensation, and employee rights and benefits. Ms. Shupe chairs the firm's ERISA and Employee Benefits practice and has been a frequent speaker nationally on employee benefits and tax issues with the American Law Institute of the American Bar Association. She received her B.A. (1973) from Syracuse University and her J.D. (1979) from Boston College.*

*David N. Heap practices in executive compensation and employee benefits law, including 401(k), 403(b), 457, pension, ESOPs, SERPs, cafeteria, stock-related and medical plans, including acting as an arbitrator or mediator in ERISA - employee benefit matters. He is a frequent speaker on employee benefit and executive compensation issues. He received his B.S. (1974) and his J.D. (1979) from the Brigham Young University.*

*Jennifer N. Mammano practices primarily in the areas of business planning and corporate law, mergers and acquisitions, securities regulation and employee benefits law. She has assisted a wide range of sizes of companies with issues of internal corporate governance, and has represented buyers and sellers in asset- and stock-based transactions. She has also represented issuers in private securities offerings. In addition, Ms. Mammano has experience in the areas of executive compensation, profit sharing plans, and benefits issues in commercial transactions. She received her B.S. (2003) from Arizona State University and her J.D. (2006) from the University of Southern California.*



Erwin D. Kratz  
Director  
520.879.6401  
ekratz@fclaw.com



Cynthia L. Shupe  
Director  
602.916.5437  
cshupe@fclaw.com



David N. Heap  
Director  
602.916.5326  
dheap@fclaw.com



Jennifer N. Mammano  
Associate  
602.916.5425  
jmammano@fclaw.com