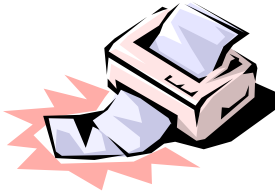


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ALERTING MANAGEMENT TO BREAKING LABOR AND EMPLOYMENT LAW DEVELOPMENTS



NO. 94 — April 2009

IRS Clarifies COBRA Subsidy Questions (& Reminder - COBRA Notice Deadline is April 18!)

By Attorneys Scott A. Becker & Emily L. Ruhsam

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- Register NOW for our May 5, 2009 LABOR LAW FORUM



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The Upper Midwest's premier
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As mentioned in a February LawFax, along with the economic stimulus package came a COBRA subsidy; a reduction in premiums for individuals who lost coverage due to an involuntarily termination of employment between September 1, 2008 and December 31, 2009. Since the stimulus bill was signed on February 17, 2009, there was nearly a six month overlap where individuals who lost coverage due to an involuntary termination of employment did not receive notice about the subsidy. These individuals are eligible for a special election period and employers must send notice to them by April 18, 2009. Employers wishing to send a notice other than the cumbersome one developed by the U.S. Department of Labor should contact Seaton, Beck & Peters for assistance with an alternative notice. We can also help you with a new “permanent” notice incorporating the subsidy information.

In addition, the IRS recently came out with some guidance to clarify some of the commonly asked questions about the subsidy. The following questions are a few of the most frequently asked.

Q-1: If an individual is eligible for group coverage elsewhere (i.e. through a spouse's plan or Medicare) does that individual qualify for the subsidy?

A-1: No. To be eligible for the subsidy, the individual cannot be eligible for any other group plan or Medicare. Also, if during the time the individual is paying the premium subsidy, the individual becomes eligible for group health plan coverage (or Medicare), the individual is required to notify the plan in writing or be subject to a tax penalty.

Q-2: Does involuntary termination include a reduction in the employee's hours?

A-2: Generally no; merely reducing an employee's hours is not an involuntary termination for purposes of the COBRA subsidy (however, see exception below for involuntary reductions to zero hours).

Q-3: What is considered an involuntary termination of employment for purposes of the subsidy?

A-3: Although not an exhaustive list, the following are some examples of “involuntary terminations of employment” for purposes of the subsidy: (1) involuntary reductions in hours to zero (i.e. lay-offs, furloughs) that result in a loss of health coverage; (2) termination for cause (unless due to gross misconduct); (3) retirement if the employee knew he/she would be terminated absent retirement; (4) severance packages, and; (5) lock-outs initiated by the employer.

Q-4: How long is a premium reduction available to an assistance eligible individual?

A-4: The reduction is available until the earlier of (1) the first date the individual becomes eligible for other group insurance or Medicare, (2) the date the individual ceases to be eligible for COBRA, or (3) nine months from the first date of the first month that the individual was eligible for the reduction.

Q-5: What other actions do employers need to take?

A-5: Any COBRA notice that is sent between February 17 and December 31, 2009 must include information about the premium subsidy. In addition, if a COBRA election notice was sent after February 17 without the required subsidy information, that notice must be re-sent.

For more information on the premium reduction, please contact the authors of this LawFax or any attorney at the firm.

Mark Your Calendar— Benefits Seminar

May 19, 2009

8:00 A.M.— 10:00 A.M.

[Registration/Continental Breakfast begins at 7:30]

Park Plaza Hotel, Bloomington

Cost: \$25 payable at the door

Experienced employee benefits attorney Scott A. Becker will be leading a seminar to update employers on recent developments in employee benefits laws. This update will include information about the recent COBRA subsidy, how to maximize your health plan options with cost effective solutions and important information about recent changes in benefits laws. For more information and to register, go to our website at www.seatonlaw.com or contact Program Coordinator, Jen Blomberg at 952.921.4621.

REGISTER NOW FOR OUR

FOURTH ANNUAL LABOR LAW FORUM

TUESDAY, MAY 5, 2009

**REGISTRATION & CONTINENTAL BREAKFAST BEGINS
AT 7:30 A.M.**

PROGRAM 8:30 A.M.—4:30 P.M.

SHERATON BLOOMINGTON HOTEL

COST: \$295

(includes breakfast, lunch & materials)

We are pleased to sponsor a full-day, upper-level program dealing with today's most significant labor and employment issues.

We will be presenting the following topics:

- **Review of Recent Labor Developments, including EFCA;**
- **Bargaining in a Distressed Economy;**
- **Employment Law Update;**
- **Effectively Handling Arbitration Cases.**

For more details on the program, and to register go to <http://www.seatonlaw.com/training/index.shtml>

The program has been approved for 6.5 Minnesota CLE credits and 7.5 Wisconsin CLE credits.



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