

NEW LAWS REGARDING COBRA CONTINUATION COVERAGE UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 [“ARRA”]

Please See CWS Employment Law Alert regarding COBRA and this new law and what your company must do now. Also, below is more detailed information regarding the changes

COBRA OVERVIEW

COBRA gives workers who lose their jobs, and thus their health benefits, the right to purchase group health coverage provided by the plan under certain circumstances. If the employer continues to offer a group health plan, the employee and his/her family can retain their group health coverage for up to 18 months by paying group rates. The COBRA premium may be higher than what the individual was paying while employed but generally the cost is lower than that for private, individual health insurance coverage. The plan administrator must notify affected employees of their right to elect COBRA. The employee and his/her family each have 60 days to elect the COBRA coverage, otherwise they lose all rights to COBRA benefits.

Note: COBRA generally does not apply to plans sponsored by employers with less than 20 employees. However, many States have similar requirements for small plans providing benefits through an insurance company. The premium reduction under ARRA is available for plans covered by these State laws, which appears to include Ohio.

CHANGES REGARDING COBRA CONTINUATION COVERAGE UNDER ARRA

Premium Reduction: The premium reduction for COBRA continuation coverage is available to "assistance eligible individuals." An "assistance eligible individual" is the employee or a member of his/her family who:

- is eligible for COBRA continuation coverage at any time between September 1, 2008 and December 31, 2009;
- elects COBRA coverage; and
- is eligible for COBRA as a result of the employee's involuntary termination between September 1, 2008 and December 31, 2009.

Those who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction. There is no premium reduction for premiums paid for periods of coverage prior to February 17, 2009.

ARRA treats assistance eligible individuals who pay 35 percent of their COBRA premium as having paid the full amount. The premium reduction (65 percent of the full premium) is reimbursable to the employer, insurer or health plan as a credit against certain employment taxes. If the credit amount is greater than the taxes due, the Secretary of the Treasury will directly reimburse the employer, insurer or plan for the excess.

The premium reduction applies to periods of coverage beginning on or after February 17, 2009. A period of coverage is a month or shorter period for which the plan charges a COBRA premium. The premium reduction starts on March 1, 2009 for plans that charge for COBRA coverage on a calendar month basis. The premium reduction for an individual ends upon eligibility for other group coverage (or Medicare), after 9 months of the reduction, or when the maximum period of COBRA coverage ends, whichever occurs first. Individuals paying reduced COBRA premiums must inform their plans if they become eligible for coverage under another group health plan or Medicare.

Special COBRA Election Opportunity: Individuals involuntarily terminated from September 1, 2008 through February 16, 2009 who did not elect COBRA when it was first offered **or** who did elect COBRA, but are no longer enrolled (for example because they were unable to continue paying the premium) have a new election opportunity. This election period begins on February 17, 2009 and ends 60 days after the plan provides the required notice. This special election period does not extend the period of COBRA continuation coverage beyond the original maximum period (generally 18 months from the employee's involuntary termination). COBRA coverage elected in this special election period begins with the first period of coverage beginning on or after February 17, 2009. This special election period opportunity does not apply to coverage sponsored by employers with less than 20 employees that is subject to State law.

Switching Benefit Options: If an employer offers additional coverage options to active employees, the employer may (but is not required to) allow assistance eligible individuals to switch the coverage options they had when they became eligible for COBRA. To retain eligibility for the ARRA premium reduction, the different coverage must have the same or lower premiums as the individual's original coverage. The different coverage can not be coverage that provides only dental, vision, a health flexible spending account, or coverage for treatment that is furnished in an on-site facility maintained by the employer.

Income limits: If an individual's modified adjusted gross income for the tax year in which the premium assistance is received exceeds \$145,000 (or \$290,000 for joint filers), then the amount of the premium reduction during the tax year must be repaid. For taxpayers with adjusted gross income between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers), the amount of the premium reduction that must be repaid is reduced proportionately. Individuals may permanently waive the right to premium reduction but may not later obtain the premium reduction if their adjusted gross incomes end up below the limits.