



EMPLOYEE BENEFITS CLIENT ALERT

February 19, 2009

STIMULUS PACKAGE CHANGES HEALTH CARE CONTINUATION COVERAGE

On February 17, 2009, the President signed the American Recovery and Reinvestment Act (the “Recovery Act”), popularly known as the stimulus package. Among other provisions, the Recovery Act included provisions which subsidize health care continuation coverage for unemployed workers.

HEALTH CARE CONTINUATION COVERAGE

COBRA is a federal law under which employees who separate from employment (among others) may continue to participate in their former employer’s group health plan. COBRA generally applies to employers with 20 or more employees. Many states have similar laws which apply to employers with fewer employees. (For purposes of this Client Alert, we will refer to all of these state and federal laws collectively as “COBRA.”) Under COBRA, former employees can be required to pay 102% of the premium for continuation coverage. The Recovery Act provides for a 65% subsidy of certain former employees’ payment obligation. The Recovery Act also provides for a special election period, allowing certain former employees a second chance to obtain continuation coverage in light of the subsidy.

Eligibility. An individual is eligible for the subsidy if the individual is eligible for and elects COBRA coverage on or between September 1, 2008, and December 31, 2009. The individual’s COBRA eligibility must be a result of an employee’s *involuntary termination* of employment. Individuals whose modified adjusted gross income exceeds \$145,000 (\$290,000 for married individuals filing jointly) are eligible for the subsidy, but they are also subject to a “recapture” tax which eliminates the value of the subsidy. These individuals must be given the opportunity to waive the subsidy and avoid the tax.

Amount. The subsidy is 65% of the amount that the individual would otherwise be required to pay for the COBRA coverage.

Time Period. For plans that charge COBRA premiums on the basis of calendar months, the subsidy begins on March 1, 2009. The subsidy may last up to 9 months. It may end earlier for a number of reasons, such as the individual becoming eligible for other coverage. The subsidy does not extend the duration of the underlying continuation coverage.

Administration. The individual should continue to make his or her 35% payment for COBRA according to whatever process was previously in place. The entity to whom payment is made (generally an employer or an insurance company) must cover the remaining 65% but is entitled to a credit off its payroll taxes in the same amount. The entity will be required to file reports with the government concerning the subsidy.

Notice. No later than *April 18, 2009*, Plan administrators must send an information notice—a notice containing general information about the subsidy—to all participants and beneficiaries who became eligible for COBRA after September 2, 2008. Additional special election notices are required as described below.

Special Election. If an individual would have been eligible for the subsidy on February 17, 2009, but declined or terminated continuation coverage before that date, the individual must be given a new

KUTAK ROCK LLP

opportunity to elect COBRA and receive the subsidy. Notices informing these individuals of the special election right and period must be sent by **April 18, 2009**. The special election period begins on February 17, 2009, and ends 60 days after the notice is provided.

Model Notices. The Recovery Act requires governmental agencies to develop and publish a model information notice and special election notice by March 19, 2009.

A complete explanation of the new COBRA rules is beyond the scope of this Client Alert. COBRA administrators (including employers who administer COBRA in-house) will need a more thorough understanding than can be provided here. All employers should begin to address these changes by identifying individuals who terminated employment involuntarily during the applicable period. Employers may also want to contact their COBRA administrators, health insurance carriers, third-party administrators, and stop-loss carriers—the implementation of these new COBRA rules will require communication among and cooperation from all of the parties involved in delivering health care coverage through employer-sponsored plans.

Employers, insurers, and third-party administrators may also want to [consult our recent Client Alert concerning the Children's Health Insurance Program Reauthorization Act of 2009 \("S-CHIP"\)](#). That Client Alert describes notice obligations for new special enrollment rights and subsidies that may be available when one becomes eligible for benefits under Medicaid or a state's program providing benefits to children in low-income families. *It may be efficient to coordinate the notice changes required by the Recovery Act and by S-CHIP.*

For more information on the material contained in this Client Alert, contact your regular Kutak Rock representative or any member of our Executive Compensation and Employee Benefits practice group listed below. For more information on our Executive Compensation and Employee Benefits practice and for recent news and alerts, please visit us at www.kutakrock.com.



John E. Schembari
john.schembari@kutakrock.com



Peter C. Langdon
peter.langdon@kutakrock.com



Janis J. Winterhof
janis.winterhof@kutakrock.com



Juliana Reno
juliana.reno@kutakrock.com



Kathryn M. Magli
kathryn.magli@kutakrock.com



William C. McCartney
william.mccartney@kutakrock.com



Margaret A. Olsen
margaret.olsen@kutakrock.com

Kutak Rock LLP | The Omaha Building | 1650 Farnam Street | Omaha, NE 68102-2186 | (402) 346-6000

This Employee Benefits Client Alert is a publication of Kutak Rock LLP. This publication is intended to notify our clients and friends of current events and to provide general information about employee benefits issues. The Kutak Rock LLP Employee Benefits Client Alert is not intended, nor should it be used, as legal advice, and it does not create an attorney-client relationship.

To ensure compliance with requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication should not be used or referred to in the promoting, marketing or recommending of any entity, investment plan or arrangement, and such advice is not intended or written to be used, and cannot be used, by a taxpayer for the purpose of avoiding penalties under the Internal Revenue Code.

©Kutak Rock LLP 2009

All Rights Reserved

This communication may be considered advertising in some jurisdictions.



Atlanta • Chicago • Denver • Des Moines • Fayetteville • Irvine
Kansas City • Little Rock • Los Angeles • Oklahoma City • Omaha • Philadelphia
Richmond • Scottsdale • Washington, D.C. • Wichita

NATIONAL RESOURCES, LOCAL RESULTS™