



Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C.
Clients and Friends Legal Alert
New Guidance on COBRA Obligations



Special Edition Newsletter

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In February, we reported that President Obama signed into law the **American Recovery and Reinvestment Act (ARRA)**. This new law created a subsidy arrangement providing eligible employees (i.e., those involuntarily separated from employment) with assistance in paying their COBRA premiums. These complex new rules have generated numerous questions from our clients; questions for which, until now, there were no answers.

IRS Explanation of New COBRA Rules

The Internal Revenue Service (IRS) has now issued guidance documents interpreting the requirements of the new law which answer many of the most common questions we have received. For example:

Q-1. What circumstances constitute an involuntary termination for purposes of the definition of an assistance eligible individual?

A-1. An involuntary termination means a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services.... In addition, an employee-initiated termination from employment constitutes an involuntary termination from employment for purposes of the premium reduction if the termination from employment constitutes a termination for good reason due to employer action that causes a material negative change in the employment relationship for the employee.

Involuntary termination is the involuntary termination of employment, not the involuntary termination of health coverage. Thus, qualifying events other than an involuntary termination, such as divorce or a dependent child ceasing to be a dependent child under the generally applicable requirements of the plan (such as loss of dependent status due to aging out of eligibility), are not involuntary terminations qualifying an individual for the premium reduction. In addition, involuntary termination does not include the death of an employee or absence from work due to illness or disability....

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Q-10. Who qualifies as an assistance eligible individual?

A-10. An individual must be an assistance eligible individual to be eligible for the premium reduction. Under ARRA, an assistance eligible individual is a qualified beneficiary as the result of an involuntary termination that occurred during the period from September 1, 2008, through December 31, 2009, is eligible for COBRA continuation coverage at any time during that period, and elects the COBRA continuation coverage. In order to be a qualified beneficiary, the individual must be covered under the group health plan on the day before the involuntary termination (except in the case of a child born to or adopted by a covered employee during a period of COBRA continuation coverage or in certain circumstances where coverage was wrongfully denied the individual

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Q-15. Does an involuntary termination of an employee following another qualifying event, such as a divorce, satisfy the requirements for the qualified beneficiary from the first qualifying event to be an assistance eligible individual?

A-15. No. Generally, if COBRA continuation coverage is based on a qualifying event before the involuntary termination, the later involuntary termination does not cause the qualified beneficiary to become an assistance eligible individual. However, if, in anticipation of an involuntary termination that would otherwise qualify an individual as an assistance eligible individual, the employer takes action other than the involuntary termination of the individual that results in a loss of coverage for the individual (for example, a reduction in hours for the employee in anticipation of involuntarily terminating the employee), the action causing the loss of coverage prior to the involuntary termination is disregarded in determining whether involuntary termination is the qualifying event that results in the COBRA continuation coverage for the individual.

Example 1. An employee is divorced after September 1, 2008, and before December 31, 2009. The divorce results in a loss of health coverage for the spouse of the employee. The spouse is eligible for and timely elects COBRA continuation coverage. After the divorce, and before December 31, 2009, the employee is involuntarily terminated and loses health coverage. The employee elects COBRA continuation coverage that begins before December 31, 2009. The spouse is not an assistance eligible individual because the qualifying event with respect to the spouse's COBRA continuation coverage is not an involuntary termination. The employee is an assistance eligible individual.

Example 2. An employee experiences a reduction in hours in March 2009 that does not constitute (and is not in anticipation of) an involuntary termination. The reduction in hours results in a loss of coverage for the employee. The employee is eligible for and timely elects COBRA continuation coverage that begins as of April 1, 2009. In November 2009, the employee is involuntarily terminated from employment. The employee cannot become an assistance eligible individual in connection with the November 2009 involuntary termination because the qualifying event with respect to the COBRA continuation coverage is not involuntary termination.

To access all of the questions and answers provided by the IRS, go to www.irs.gov/pub/irs-drop/n-09-27.pdf.

Model Notices and Other General Information Available From Department of Labor

The ARRA also requires employers to provide updated notices or supplemental notices of the subsidy and, if applicable, an option to enroll in different coverage. The U.S. Department of Labor (DOL) has prepared a model notices for these purposes. These model notices as well as other more general information regarding to the new COBRA requirements can be found at the DOL's website. (Model Notices: www.dol.gov/ebsa/COBRAModelNotice.html. General Information: www.dol.gov/ebsa/cobra.html.)

Please feel free to contact us at 315-437-7600 with any questions.