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MEMO

From: James A. Christopherson, Esq.
Subject: Changes in COBRA
Date: February 20, 2009

The Consolidated Omnibus Budget Reconciliation Act (COBRA) has been significantly changed by the American Recovery and Reinvestment Act of 2009 signed by President Obama this week (the "ARRA"). The purpose of this Memorandum is to summarize the changes. This Memorandum is being written within days of the ARRA being signed so it is certainly possible that additional modifications or interpretations of the changes may evolve as the bill is more closely examined. The ARRA becomes effective March 1, 2009.

SUMMARY OF THE CHANGES IN COBRA

Individuals who involuntarily separate from employment between September 1, 2008 and January 1, 2010 can elect to pay 35% of their premium for COBRA coverage and will be treated under the ARRA as having paid the full amount. The former employer will pay the remaining 65% of the premium. In return, the employer will be able to credit its share of the temporary COBRA subsidy against wage withholdings and payroll taxes.

COBRA BACKGROUND AND DETAILED DISCUSSION OF THE CHANGES

COBRA provides certain former employees, retirees, spouses, former spouses, and dependent children the right to temporary continuation of health coverage at group rates. This coverage, however, is only available when coverage is lost due to certain specific events. Group health coverage for COBRA participants is usually more expensive than health coverage for active employees, since often

the employer pays a part of the premium for active employees while COBRA participants generally pay the entire premium themselves. It is ordinarily less expensive, though, than individual health coverage.

COBRA generally is applicable to employers with 20 or more employees. In most situations a qualified employee can purchase COBRA benefits for an additional 18 months.

The ARRA gives employers tax credits for paying a large portion of a former employee's health care premium. It provides a nine-month, 65 percent subsidy for COBRA premiums for people who lose their jobs between September 1, 2008, and December 31, 2009. The premiums average about \$1,000 a month.

One provision that was widely discussed but did not survive negotiations would have made employers responsible for extending health coverage to workers who are 55 or older or have 10 years on the job. This provision would have been permanent but it was eliminated from the final bill.

To be eligible for the subsidy employees must have been involuntarily terminated (for reasons other than gross misconduct) between September 1, 2008 and December 31, 2009 and must be eligible for COBRA. If an employee was involuntarily terminated on or after September 1, 2008; employers are required to locate any employee who was involuntarily terminated on or after September 1, 2008 to (a) make him or her aware of the subsidy and (b) provide him or her another opportunity to elect COBRA.

Employers must provide individuals with additional election materials and subsidy information within 60 days after ARRA becomes law. The former employees will then have 60 more days after receiving this notice to elect COBRA. This COBRA coverage, however, will not be retroactive and will take effect as of March 1, 2009. The COBRA coverage terminates at the earlier of (a) 9 months; (b) eligibility for other employer health coverage; (c) Medicare eligibility; (d) the end of the maximum COBRA coverage period required by law; or (e) for those electing COBRA during the special election period, the end of the COBRA period starting from the initial time period when the employee could have elected COBRA.

The employer pays the 65% on the employee's behalf and is then reimbursed. The employee must pay 35% of COBRA before the employer can request reimbursement of the other 65%. The employer reimbursement is made by the employer taking a credit against its liability to deposit payroll taxes and federal income taxes withheld from the employees' compensation.

Employers have to update their COBRA election notices to reflect the subsidy. Hopefully the Department of Labor will have draft model notices prepared in the near future.

If you have any questions or need legal assistance, please contact James A. Christopherson at Christopherson@ddc-law.com or 231-929-0500.