

How Will New COBRA Rules Affect You?

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Introduction

- Structure and format of presentation
- Email questions to: HRSeminars@dwt.com
- Topics covered:
 - Which employers affected? When? What if fail?
 - Expanded COBRA election rights
 - Premium assistance
 - Notice obligations
 - Final Q & A

The Act Affects Most Employers

- Employers with group health plans subject to COBRA through Tax Code, ERISA or PHSA (Public Health Service Act):
 - Private companies with 20 or more employees
 - State and local government employers
- Federal government
- Other employers with group health plans subject to COBRA “comparable coverage” (such as state “mini-COBRA”)

Some Plans Specifically Exempt

- Health spending accounts (HSAs)
- Health flexible spending account (FSAs) under a Code Section 125 cafeteria plan
- Church group health plans may be excluded (i.e., free from ERISA, Tax Code or state mini-COBRA laws)
- The Act focuses on “group health plans”
 - Include dental-only and vision-only plans
 - Includes health reimbursement arrangements (HRAs) and some employee assistance plans (EAPs)

Effective Dates

- The Act is effective February 17, 2009, but applicable for any “period of coverage” after that date
- If “period of coverage” = monthly, then March 1, 2009
- Exceptions possible for shorter coverage periods
- Special effective dates for premium subsidy eligibility (September 1, 2008 through December 31, 2009)
- Extended COBRA election period also tied to date of notice

Failure to Comply

- Legislative history suggests violation of new notice rules is a violation of COBRA notice rules
- ERISA attaches \$110/day penalties for COBRA notice violations
- Tax Code \$100/day excise tax for COBRA violations
- Potential lawsuits under ERISA and Public Health Service Act
- “Other relief” for COBRA notice failures?

Extended COBRA Rights

- The Act provides assistance eligible individuals (AEIs) another opportunity to elect COBRA
- Additional election right does not extend to “COBRA-comparable coverage” plans
- Election right begins February 17, 2009 and continues for 60 days following notification
- Election right available even if AEI did not previously elect, or prematurely ended COBRA

Extended COBRA Rights

- If elected, new COBRA coverage begins with first period of coverage on or after February 17, 2009
- New coverage opportunity does not reach back to earlier periods
- New coverage does not extend period of COBRA coverage beyond what otherwise available

Extended COBRA Rights

- Special HIPAA rules on pre-existing conditions apply if AEI elects coverage during extended period
- Interim period disregarded for purposes of 63-day break in credible coverage rules under HIPAA

COBRA Premium Assistance

- AEI pays only 35% of COBRA premium
- Employer or insurer picks up remaining 65% and is later reimbursed by the federal government
- AEI's 35% can be paid by third party, but employer payment alters benefit
- Premium subsidy continues for up to 9 months

COBRA Premium Reimbursement

- 102% of applicable premium still allowed
- AEI pays 35% of what plan charges
- Credit or repayment if AEI pays full premium
- Issues arise if employer helps out AEI
 - Premium of \$500, but employer pays \$100
 - AEI pays 35% of \$400/subsidy 65% of \$400

COBRA Premium Assistance

- Subsidy begins on first day of first month of the period of coverage beginning on or after February 17, 2009
- Subsidy ends on the earliest of:
 - 9 months after the first day of the first month of coverage
 - The date following expiration of the maximum COBRA coverage period
 - If the individual becomes “eligible” for coverage under other group health plan or Medicare (other than dental, vision, counseling, referral services, flexible spending arrangements under Tax Code § 106(c)(2) or through an onsite medical clinic)

COBRA Premium Assistance

- Qualified beneficiaries are eligible for COBRA assistance if:
 - Eligible for federal or state COBRA at any time between September 1, 2008 and December 31, 2009; and
 - Elects COBRA (when first offered or during extended election period); and
 - Involuntarily terminated between September 1, 2008 and December 31, 2009

COBRA Premium Assistance

- Income limits apply
- If taxpayer's income exceeds \$145,000 (\$290,000 for joint filers), then amount of the premium reduction must be repaid
- If taxpayer's income is between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers), the amount of the premium that must be repaid is reduced proportionately
- High-income individuals can waive assistance

COBRA Premium Assistance

- Federal government subsidizes
- Usually employer subject to reimbursement, but in some cases insurer
- Treat employer/insurer payment as payment of payroll tax
 - IRS Form 941
 - Offset payroll taxes owed
 - Excess amounts treated as credits or refunds of payroll taxes

COBRA Premium Assistance

- Documentation to secure reimbursement
- Attestation of involuntary termination of employment
- Report showing:
 - Amount of payroll taxes offset
 - Tax ID numbers of affected former employees
 - Amount of subsidy reimbursed for each former employee and dependent

New Notice Requirements

- Plan sponsors must send additional “premium assistance notice”
- New notice to anyone who became eligible to elect COBRA between September 1, 2008 and December 31, 2009:
 - Notice of the availability of premium reduction
 - Notice of extended election rights
 - Notice of ability to enroll in different coverage (if employer permits)
- May satisfy notice requirements by amending existing election notices or including a supplement
- April 17, 2009

New Notice Requirements

- Notice must include forms necessary to establish eligibility
- Specific notice content requirements:
 - Name, address, telephone number of plan administrator and any other relevant person
 - Description of the extended election period
 - Description of the obligation of AEI to notify plan of eligibility for subsequent coverage

New Notice Requirements

- Specific notice content requirements, continued:
 - Description (displayed in a prominent manner) of AEI's right to a reduced premium
 - Description (displayed in a prominent manner) of any conditions and entitlement to a reduced premium
 - Description of the option of the AEI to enroll in different coverage (if employer permits)

New Notice Requirements

- Technical distinction between “premium assistance notice” and extended election notice
- Send to qualifying beneficiaries who would be eligible for premium subsidy, and who became entitled to COBRA before February 17, 2009, but have no coverage as of that date
- Plan administrator must provide notice within 60 days after February 17, 2009 (April 17, 2009)
- Notice must include right of extended election period, premium subsidy, and plan enrollment option (if applicable)

Other Plan Enrollment Option

- If permitted by employer, AEI may elect to enroll in different coverage
- Plan administrator has 60 days to give notice
- Eligible qualified beneficiary has 90 days after notice to elect

Other Plan Enrollment Option

- Different coverage must be coverage offered to active employees
- Different coverage may not have higher premium
- Different coverage cannot be restricted coverage (i.e., dental only, vision only, flexible spending arrangement, on-site medical facility, or wellness plan)

Help With Notices

- The Act directs DOL to provide model notices no later than 30 days after February 17, 2009
- The DOL directed to provide outreach and education
- The DOL dedicated Web site for guidance related to COBRA premium assistance:

<http://www.dol.gov/ebsa/cobra.html>

Notice Obligations of Eligible Qualified Beneficiaries

- AEs must notify plan (in writing) when no longer eligible for premium assistance
- DOL to specify time and manner of providing this notice
- Penalty for violating individuals—110% of premium reduction after termination of eligibility

Compliance Checklist

- Are you an affected employer?
- If so, determine eligible qualified beneficiaries
- Satisfy new notice requirements
- Establish administrative procedures for 65% premium subsidy
- Establish administrative procedures for federal reimbursement
- Additional guidance can be found at:
www.dol.gov/ebsa/cobra.html