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Client Alert – The American Recovery and Reinvestment Act of 2009

The recently passed federal stimulus package, the American Recovery and Reinvestment Act of 2009 (ARRA), included new COBRA provisions, requiring employers to take some immediate steps. The ARRA provides a federal government subsidy for COBRA continuation coverage premiums paid after the enactment date (February 17, 2009) for certain employees and their beneficiaries who are involuntarily terminated from employment. It also extends COBRA continuation coverage periods for certain persons receiving Trade Adjustment Assistance benefits or pension benefits from the Pension Benefit Guaranty Corporation.

The subsidy is available for a maximum of nine months and is available for those who meet the following requirements: are eligible for COBRA coverage on or after September 1, 2008 through December 31, 2009; elect COBRA continuation coverage either during the initial election period or during a special enrollment period designated in the ARRA (60 days after the employer gives notice of the special enrollment period); and have coverage because a covered employee was involuntarily terminated from employment, other than for willful misconduct, between September 1, 2008 and December 31, 2009. An employer can only charge those who elect the subsidy 35% of the maximum COBRA premium; the employer is reimbursed the remaining 65% by the federal government through credits against payroll and federal income taxes that the employer is required to deposit. If an employer charges less than the maximum COBRA premium, then there is a formula which applies to determine the amount of reimbursement an employer can receive.

The special enrollment period enables an eligible person, currently not covered by COBRA, to elect coverage in light of the available subsidy. The special enrollment period begins on the day of enactment of the ARRA and ends 60 days after an employer gives notice. If a person elects during the special enrollment period, COBRA coverage begins on the first day of the first COBRA coverage period beginning after the date of enactment of the ARRA (March 1st for group health plans using calendar months as COBRA coverage periods).

To be compliant with these new COBRA requirements, employers must issue two important notices. They must give notice of the special enrollment period and notice of the availability of the subsidy. **These notices are to be provided by March 1, 2009!** The Department of Labor is to produce model notices but has until 30 days from enactment to do so.

If you need assistance with ensuring your company becomes compliant with these new COBRA requirements or have any questions about these issues, please contact us.

Sincerely,

Angela L. Thomas

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Andrea E. Dean

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The information herein reflects the views of the author. The information should be construed as general guidelines and not interpreted as legal advice.

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