

PENNSYLVANIA MINI-COBRA EFFECTIVE JULY 10, 2009**BY: NANCY CONRAD AND GEORGE C. MORRISON**

On June 10, 2009, Pennsylvania Governor Edward G. Rendell signed into law Act 2 of 2009 (the Act), which amended the Pennsylvania Insurance Company Law of 1921. The Act expands the rights found under the Federal Consolidated Omnibus Budget Reconciliation Act of 1985, commonly referred to as Federal COBRA, to all group health plans maintained by private-sector employers having two to nineteen employees. The Act also adopts provisions of the 2009 American Economic Recovery and Reinvestment Act that provide premium reductions for COBRA healthcare continuation coverage. The Act is effective on July 10, 2009.

Federal COBRA

Federal COBRA applies to all group health plans maintained by private-sector employers having 20 or more employees, and state and local governments. COBRA provides workers who lose their jobs, and thus their health benefits, the right to purchase group health coverage provided by the health plan maintained by the private-sector employer. COBRA requires continuation coverage of 18 to 36 months to be offered to covered employees, their spouses, their former spouses, and their dependent children, when group health coverage otherwise would be lost by the occurrence of certain events. Such events include termination or reduction in the hours of a covered employee's employment for reasons other than gross misconduct. Under the 2009 American Economic Recovery and Reinvestment Act, assistance eligible individuals, who are persons eligible for COBRA as a result of an involuntary termination between September 1, 2008 and December 31, 2009, pay only 35 percent of their COBRA premiums.

Pennsylvania Mini-COBRA

The Act, also known as Pennsylvania Mini-COBRA, applies to all group health plans maintained by private-sector employers having two to nineteen employees. Mini-COBRA, like Federal COBRA, provides workers who lose their jobs, and thus their health benefits, the right to purchase group health coverage provided by the health plan maintained by the private-sector employer. To be eligible for continuation coverage, an employee must have been on the employer's insurance for at least three months prior to a qualifying event. In addition, the employee cannot be eligible for Medicare or other private group health insurance.

Pennsylvania Mini-COBRA requires continuation coverage of nine months to be offered to covered employees and eligible dependents when group health coverage otherwise would be lost by the occurrence of a qualifying event. Similar to Federal COBRA, qualifying events under Mini-COBRA include an employee's termination, or, for the spouse, divorce from, or death of, the employee, or for the child, ceasing to be a dependent.

Covered employees and eligible dependents may be required to pay up to 105 percent of the group rate for continuation coverage. The

Act also adopts provisions of the 2009 American Economic Recovery and Reinvestment Act that provide assistance eligible individuals a 65 percent premium reduction. An assistance eligible individual is the employee or a member of his/her family who:

1. is eligible for Mini-COBRA continuation coverage at any time between July 10, 2009 and January 1, 2010;
2. elects Mini-COBRA coverage; and
3. is eligible for Mini-COBRA as a result of the employee's *involuntary termination* between July 10, 2009 and January 1, 2010.

The IRS recently issued Notice 2009-27,¹ which defines involuntary termination. Under this notice, involuntary termination is defined as "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." While this definition provides additional insight into the Act, the ultimate determination of whether a termination is involuntary depends on the circumstance of each individual case.

Action Required

Under the Act, the employer's group health insurer must provide notice to its policy holders of their rights under Mini-COBRA by August 24, 2009. The employer of a covered employee must notify the employee and its insurer of a qualifying event within 30 days of a qualifying event. Notice to the covered employee must indicate the employee's Mini-COBRA rights.

We recognize many, if not all, small Pennsylvania employers may require assistance in complying with the new Mini-COBRA provisions. We look forward to helping both our current and prospective clients with the new aspects of Mini-COBRA. As July 10, 2009 rapidly approaches, please do not hesitate to contact us with any questions or concerns.

¹ See www.irs.gov/pub/irs-drop/n-09-27.pdf

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