



# California Employment Law Update

Andrew Shalauta

March 2009

## **The American Recovery and Reinvestment Act of 2009 (ARRA) Requires Employers To Pay A New COBRA Subsidy For Qualifying Terminated Employees**


The American Recovery and Reinvestment Act of 2009 (ARRA) enacted as part of President Obama's financial stimulus package requires employers to pay a new subsidy for employee premiums for Consolidated Omnibus Budget Reconciliation Act (COBRA) benefits. ARRA requires employers to pay a 65% subsidy for eligible individuals towards their COBRA coverage for up to 9 months.

Here are the highlights of ARRA:

- ◇ Eligible workers for the subsidy are those workers who were involuntarily terminated, other than for gross misconduct, between September 1, 2008 and December 31, 2009 and qualify for COBRA benefits (covered under a group health plan).
- ◇ A covered spouse or dependent child who became a qualified beneficiary because of the involuntary termination of the covered employee's employment is also entitled to the subsidy.
- ◇ Former employees that qualified for COBRA benefits but declined coverage have 60 days after receiving notice of the special election period to elect COBRA coverage and obtain the subsidy.
- ◇ The subsidy ends after nine months of payments, or, when the individual becomes eligible for coverage under another group health plan or Medicare, or, the end of the maximum COBRA coverage period (but no longer than nine months).
- ◇ Employers that administer COBRA benefits can receive a tax credit against payroll taxes for the cost of the subsidy.
- ◇ Employers are required to maintain supporting documentation to claim a tax credit, including, information on payment of the premiums and attesting to involuntary termination.

Employers and plan administrators subject to COBRA need to act promptly to respond to this new federal legislation by taking the following steps:

- ◇ Implement administrative procedures to identify eligible individuals for the subsidy and their last known addresses.

- 
- ◇ Implement administrative procedures to provide written notice to eligible individuals for the subsidy within 60 days from February 17, 2009, the date of enactment. (Note model notices should be issued by the U.S. Department of Labor within a few weeks).
  - ◇ Implement the extended COBRA coverage periods for eligible individuals.
  - ◇ Take steps to start providing the 65 percent subsidy to eligible workers beginning March 1, 2009 (employers will have to reimburse payments made by eligible individuals that fall under the subsidy).
  - ◇ Determining the correct premium subsidy that applies to individuals who are not being required to pay the maximum permissible COBRA premium.
  - ◇ Consult with payroll department to maintain proper recordkeeping to claim the tax credit.

*We encourage all employers and plan administrators to take immediate actions to ensure compliance with ARRA. Employers with questions about compliance with ARRA should consult with an employment attorney. Mr. Shalauta specializes in employment litigation and counseling for businesses. Mr. Shalauta can be reached at (510) 835-6716 and [ashalauta@burnhambrown.com](mailto:ashalauta@burnhambrown.com).*