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AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 – COBRA SUBSIDY

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA). Title III of ARRA includes provisions that expand COBRA coverage for individuals who have been involuntarily terminated from employment between September 1, 2008 and December 31, 2009. The COBRA subsidy is subject to limitations based on annual income amounts, with a phase-out for individuals with adjusted gross incomes between \$125,000 and \$145,000 and joint filers between \$250,000 and \$290,000. The provisions in ARRA providing the COBRA subsidy became effective on February 17, 2009, as of the President's signing.

Prior to the enactment of ARRA, individuals who were eligible for COBRA continuation coverage were required to pay the entire premium. Under the new legislation, eligible individuals will be required to pay only thirty-five percent of the cost of the premium for up to a nine month period. Once an employer receives the eligible individual's thirty-five percent contribution, it will be reimbursed the remaining sixty-five percent of the premium not received from the eligible individual by claiming the subsidy amount as a credit on its quarterly employment tax return (IRS Form 941). In the event that the total amount of the employer's credit is greater than its tax liability (resulting in an overpayment), the employer may either elect to apply the overpayment to its next return, or request a refund.

Although the COBRA subsidy is available to employees who were terminated as of September 1, 2008, the subsidy itself is effective for periods of coverage beginning on or after the date of the enactment of ARRA. For group health plans using calendar months for coverage, the subsidy is effective March 1, 2009.

ARRA provides that employers must give notice of the subsidy to employees who are terminated through the end of this calendar year, in addition to requiring that employers provide notification of the subsidy to employees who were terminated prior to the effective date of this legislation. Individuals who had initially declined COBRA coverage shall be given an additional sixty days, through April 17, 2009, to elect COBRA continuing coverage with the benefit of the new subsidy.

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The Department of Labor has established a website containing additional information and links to websites and documents that provide further insight into the new ARRA legislation and COBRA subsidy (<http://www.dol.gov/ebsa/cobra.html>). Furthermore, the Employee Benefits Security Administrator (EBSA) is actively working to issue additional guidance regarding the COBRA premium reductions.

For further information about these changes and steps that should be taken to maintain compliance with the new legislation, please contact Christopher L. Brigham of the Employment Law Practice Group at (203) 786-8310 or cbrigham@uks.com, or Angel Peterson of the Employment Law Practice Group at (203) 786-8311 or apeterson@uks.com.

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