

TAX Update

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

COBRA Subsidy and Special Enrollment Rights Employer Action Needed

February 25, 2009

The recent economic stimulus legislation contains several provisions affecting the administration of employer-provided health plans. This update focuses on two items that will require immediate attention in the coming weeks: the COBRA premium subsidy and new special enrollment rights.

New COBRA Elections

Employees (and their previously covered dependents) who were involuntarily terminated between September 1, 2008 and February 17, 2009 must be provided a “second chance” to elect COBRA coverage if they previously declined or let COBRA coverage lapse. Coverage is available to these persons for the remainder of their original 18-month COBRA period. Beginning March 1, 2009, eligible individuals who enroll for COBRA coverage will receive a 65% subsidy toward their cost of premiums.

- *Employer action:*
 - By April 17, 2009, notify eligible persons of the subsidy and the chance to elect COBRA coverage. Eligible persons have 60 days to elect COBRA coverage.
 - By April 17, 2009, notify current COBRA enrollees who terminated involuntarily (on or after September 1, 2008) of the new premium subsidy. Premium payments by these individuals in excess of 35% (during March and April) must either be (i) refunded within 60 days or (ii) credited to future premium payments within 180 days.

COBRA Subsidy Limits

The COBRA subsidy lasts no more than nine months per individual and is limited to persons with AGI of \$125,000 or less (\$250,000 if filing jointly). Individuals with AGI between \$125,000 and \$145,000 (\$250,000 and \$290,000 if filing jointly) are eligible for a reduced subsidy.

- *Employer action:* Identify former employees with AGI likely approaching these limits. Consider the use of subsidy waivers to avoid taxable payments to these individuals.

Revised COBRA Notices

Persons eligible for COBRA between September 1, 2008 and December 31, 2009 (whether or not involuntarily terminated) must receive notice of the new subsidy and its conditions.

- *Employer action:* Revise COBRA notices to describe the new subsidy arrangement; alternatively, develop a supplemental notice to be distributed with existing COBRA notices (a model notice is expected from DOL by March 19).

Tax Reporting

Employers may claim reimbursement for the subsidy amounts by offsetting their payroll taxes. To do this, employers must be prepared to verify the eligibility of all recipients and amounts claimed. Reimbursements may be claimed on Form 941, which is currently under revision by the IRS.

- *Employer action:* Draft attestation form for individuals to establish eligibility based upon an involuntary termination; implement payroll procedures to track identity (including social security numbers) of covered persons and subsidy amounts.

Special Enrollment

Effective April 1, 2009, group health plans must permit employees and dependents who are eligible but not enrolled for coverage to enroll in the event of loss of coverage or eligibility for a premium subsidy under Medicaid or a state children's health insurance program. Special enrollment is available for up to 60 days after the qualifying event.

- *Employer action:* Plan documents must be amended to reflect these new special enrollment rights. Plans must also distribute notice of the new rules beginning in 2011.

Please contact any of the attorneys in Bass Berry & Sims' COBRA Compliance Team for assistance. We have developed comprehensive procedures to assist employers in complying with the tax reporting and legal requirements of these new laws.

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