

ATTENTION SMALL EMPLOYERS:
PENNSYLVANIA PASSES “MINI-COBRA” LAW

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On June 10, 2009, Governor Ed Rendell signed into law Act 2 of 2009, Pennsylvania’s “Mini-COBRA” Law. The federal Consolidated Omnibus Budget Reconciliation Act (“COBRA”) requires that individuals working for employers with at least 20 employees generally have the opportunity to continue their employer-sponsored health insurance benefits for themselves and their dependents a period of time after their termination, layoff or resignation from employment, as well as for other qualifying events.

COBRA requires that the covered individual pay up to 102% of the cost of the health care insurance. Under the American Recover and Reinvestment Act of 2009 (“ARRA”), COBRA was amended to provide a federal subsidy so that many employees who lose their employment involuntarily from September 1, 2008 through December 2009 can continue health care benefits for themselves and their dependents by paying 37% of the cost, rather than 102%. ARRA also encouraged states that had not already done so to pass laws extending COBRA benefits to employees of smaller employers. Pennsylvania’s new Act 2 is designed to take advantage of the federal subsidy, to provide continued group health care coverage for qualified employees of small employers and their dependents for up to nine months.

Employees of small employers generally will be eligible for COBRA continuation benefits under Act 2 if: (1) they have had a “qualifying event,” which includes termination from employment, death, a minor dependent coming of age, divorce, or becoming eligible for Medicare; (2) they have been covered by the employer’s group health care plan for a period of at least three months prior to the qualifying event; and (3) they are not eligible to be covered under any other group health care plan (including a spouse’s plan or Medicare).

Eligible individuals electing continued coverage under Act 2 will be responsible to pay up to 105% of the group rate for the coverage. ARRA, however, will allow a 65% subsidy of this amount, if the employee was involuntarily separated at any time from the effective date of Act 2, July 10, 2009, until the sunset of the ARRA provision, December 31, 2009. Thus, an employee of a small employer who qualifies under ARRA will be responsible to pay only 40% of the cost of the continued health care coverage.

Under federal law, employers pay the 65% of the cost not paid by employees, and take a tax credit against payroll taxes for this amount. Under Act 2, however, the insurance companies, rather than the small employers, are responsible to pay the subsidy and will be eligible for the credit. However, that does not mean that small employers do not have new obligations under the Act.

Act 2 requires that employers must provide eligible individuals with notice of their rights to health care coverage continuation within 30 days of a qualifying event. In addition, Act 2 requires that the group policy must provide notice of the new law to policyholders within 45 days of the July 10, 2009 effective date of Act 2. Depending on the small employer’s particular

situation, the insurance company, the small employer, or a third party administrator may have the responsibility to provide this notice. In any case, small employers need to ensure that this notice is given.

While Pennsylvania's mini-COBRA was enacted to take advantage of the ARRA subsidy, it is not designed to sunset when the subsidy provision sunsets. Nor does it cover only those individuals eligible for the ARRA subsidy. Thus, while the ARRA subsidy covers only employees and dependents of employees who lose their jobs involuntarily, Act 2 covers any employees and their dependents who lose their health care coverage for any of the qualifying reasons set forth above.

The Bottom Line: Small employers who provide health care benefits now have added responsibilities to employees and their dependents who have a qualifying event as defined by Act 2. COBRA can be difficult to administer. Small employers should work with their insurance companies and any third-party administrators to ensure compliance with this law. If you have any questions about Act 2 or COBRA benefits in general, contact Whitney Rahman or John Roland at 610-372-5588.