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O F C O U N S E L

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## **URGENT CLIENT ALERT: COBRA SUBSIDY and CHIP LEGISLATION**

**THIS ALERT REQUIRES IMMEDIATE ACTION. PLEASE CONTACT TIM MCGRAW ([tim@skalaw.com](mailto:tim@skalaw.com)) OR NANCY SPEZIA ([space@skalaw.com](mailto:space@skalaw.com)) or by phone at (734) 747-7050.**

**YOU MUST PROMPTLY CHANGE THE FOLLOWING:**

- **Plan Documents**
- **Summary Plan Descriptions**
- **COBRA Notices**
- **COBRA and Special Enrollment Election Procedures**

**TWO NEW FEDERAL LAWS, ENACTED IN RESPONSE TO THE ECONOMIC/EMPLOYMENT CLIMATE, REQUIRE IMMEDIATE ACTION.**

**COBRA CHANGES: THERE IS A NEW COBRA SUBSIDY, BY WHICH CERTAIN PERSONS WHO ARE INVOLUNTARILY TERMINATED ARE ELIGIBLE FOR A 65% FEDERAL SUBSIDY OF COBRA COSTS. EMPLOYERS MUST IMMEDIATELY CHANGE FORMS AND COBRA ADMINISTRATION. EMPLOYERS MUST "FRONT" THE SUBSIDY, AND RECOVER IT VIA A PAYROLL TAX OFFSET. ACTION REQUIRED BY MARCH 1.**

**CHIP AND SPECIAL ENROLLMENT CHANGES: THERE IS AN EXPANSION OF SPECIAL ENROLLMENT RIGHTS IN GROUP HEALTH PLANS, IN CASES INVOLVING CHILDREN'S HEALTH INSURANCE PROGRAMS ("CHIP") AS WELL AS MEDICAID. ACTION REQUIRED BY APRIL 1.**

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**DUE TO THE SHORT TIMING, AND INDIVIDUAL VARIATIONS, THIS NOTICE HITS THE HIGH POINTS ONLY. PLEASE CONTACT US FOR REQUIRED ACTION.**

**MORE INFORMATION FOLLOWS.**

**COBRA SUBSIDY**

Former employees, etc. must pay for COBRA coverage. The recently enacted American Recovery and Reinvestment Act of 2009 provides a new nine-month, 65% government subsidy of COBRA premiums for certain employees who were involuntarily terminated on or after September 1, 2008 and on or before December 31, 2009. The subsidy is not retroactive; it becomes effective on **March 1, 2009**. So someone involuntarily terminated in November, 2008 can't get retroactive reimbursement, but can get a prospective subsidy.

The full subsidy is not available to those individuals with AGI exceeding \$125,000 (\$250,000 if married filing a joint return.) Eligibility for the subsidy ends when the individual is **offered** other employer-provided coverage or becomes **eligible** for Medicare. (These cut-offs are different than general COBRA rules.)

- You should revise your COBRA notices **NOW** to reflect the availability of the subsidy. You will be required to notify any employees who were involuntarily terminated on or after September 1, 2008, and who declined COBRA coverage of another opportunity to elect now and take advantage of the subsidy.
- This notice has to be given within the next 60 days. There will be a model notice available within the next 30 days.
- You should identify those who will require the notice and either develop your own notice now, or wait until the model notice is available. Either way, it is best to identify the affected former employees now.
- Plan documents and summary plan descriptions likely require changes.

The subsidy will be paid by you (the employer) initially, and you will receive a credit when you file your payroll taxes.

The subsidy does not apply to Health FSAs.



**CHIP LEGISLATION**

The Children's Health Insurance Program Reauthorization Act of 2009 ("CHIP"), which was signed into law on February 4, 2009, extends and expands the state children's health insurance program to permit states to subsidize premiums for employer-provided group health coverage for eligible children and families. States may elect to offer a premium assistance subsidy to eligible low-income children and their families for "qualified employer-sponsored coverage" as defined in the new law (benefits provided under health FSAs and high-deductible health plans are specifically excluded from the definition). The subsidy may be provided as a reimbursement to the employee or as a direct payment to the employer (unless the employer opts out of receiving direct payments).

CHIP also provides new special enrollment rights, as well as new notice and disclosure obligations, with respect to employer-provided group health plans. The new law permits special enrollment as a result of loss of eligibility under a Medicaid plan or CHIP and upon becoming eligible for a premium assistance subsidy under Medicaid or CHIP and these new special enrollment rights include a 60-day period for requesting coverage, rather than 30 days. Plan documents, summary plan descriptions and procedures must be modified.

**These new special enrollment rights are effective April 1, 2009, so your group-health care plans are required to accommodate such requests on that date. As such, you should commence amending your group health plans and cafeteria plans to permit such requests effective April 1, 2009.**

**All cafeteria plans (and component plans) require attention this year due to proposed cafeteria plan regulations that are expected to be finalized in 2009. When we discuss the CHIP and COBRA issues, we can also discuss the other cafeteria plan updates.**