

Pennsylvania Adopts Mini-COBRA Requirements for Small Employers with Insured Medical, Hospital, or Surgical Benefits

August 4, 2009

Background

Federal COBRA rules only apply to employers with 20 or more employees. However, 39 states and the District of Columbia have various mini-COBRA rules in their state insurance codes that apply to small businesses (usually those with 2 to 19 employees) that provide medical benefits to their employees. These rules tend to be similar to, although often not exactly like, federal COBRA rules. Some of the state COBRA rules also apply to larger employers that purchase insured benefits (such as parts of the CAL-COBRA rules or the recent New York 36-month continuation legislation) or employers (such as churches) that are not subject to the ERISA rules that generally preempt state insurance laws.

The American Recovery and Reinvestment Act of 2009 (ARRA) introduced a 65% assistance payment for individuals who are involuntarily terminated from employment¹ and extended the 65% assistance to state mini-COBRA rules. Further, to the extent provided under state law, the ARRA second-chance election opportunity is also available for individuals subject to the state mini-COBRA rules, and, to date, approximately 17 states (including California, Illinois, and New York) have expanded their mini-COBRA rules to permit the second-chance election and another four states permit the second-chance election through regulations.

Pennsylvania Mini-COBRA Requirements

Pennsylvania has now become the fortieth state to adopt a mini-COBRA provision effective for losses of coverage that occur on or after July 10, 2009. The new Pennsylvania mini-COBRA provision requires that eligible employees of small employers (from 2 to 19 employees) be given the opportunity to purchase continuation healthcare coverage for themselves (and their eligible dependents) for a period of up to nine months. In the tradition of many other state mini-COBRA rules, the new Pennsylvania rules are similar,

1. For more information on the COBRA subsidy, please read our LawFlashes on the topic: “Stimulus Plan Requires Immediate COBRA Action” (available at http://www.morganlewis.com/pubs/EconoStimulus_COBRAAction_LF_17feb09.pdf), “Further Details on New COBRA Rules” (available at http://www.morganlewis.com/pubs/EconoStimulus_COBRAFurtherDetails_LF_24feb09.pdf), “DOL Releases Model COBRA Notices for Stimulus Bill 65% Assistance Payment Provisions” (available at http://www.morganlewis.com/pubs/EconoStimulus_ModelCOBRANotices_LF_19mar09.pdf), and “IRS Issues COBRA Q&As for Stimulus Bill 65% Assistance Payment Provisions” (available at http://www.morganlewis.com/pubs/EconoStimulus_COBRAQ+A_LF_07apr09.pdf).

but not identical, to the federal COBRA rules. The Pennsylvania statute can be found in Section 635.4 of the Insurance Company Law of 1921 and is sometimes referred to as “Act 2 of 2009.”

Eligible employees under the new Pennsylvania provision include employees who (1) had healthcare coverage under their small employers’ group health insurance plan for a period of three months prior to their termination, (2) are not currently eligible for Medicare, and (3) are not eligible for or covered by other private group health insurance.

According to the Pennsylvania Insurance Department, the employer is required to send out the Pennsylvania Mini-COBRA notices to eligible employees within 30 days after a qualifying event. The employer is also required to notify the plan administrator when an individual experiences a qualifying event. Eligible employees (and their dependents) may then elect, within 30 days, to continue with their group health insurance.

Variations from Federal COBRA Rules

Some of the ways in which the Pennsylvania Mini-COBRA rules are different than the federal COBRA rules include the following:

Pennsylvania’s Mini-COBRA

- Applies to employers with more than 1 but fewer than 20 employees.
- Only applies to insured group medical, hospital, or surgical insurance policies.
- Provides continuation healthcare coverage for nine months.
- Allows the employer to charge up to 105% of the insurance group rate.
- Requires that employees have three months of group health insurance coverage in order to be eligible.
- Requires that coverage end if the individual fails to verify that he or she is not eligible for coverage under another group health plan.

Federal COBRA

- Applies to employers with more than 20 employees.
- Applies to insured arrangements and self-insured programs as well as vision and dental plans.
- Provides continuation healthcare coverage from 18 to 36 months.
- Allows the employer to charge up to 102% of the insurance group rate.
- Requires that employees have only one day of coverage in order to be eligible.
- Requires that coverage end when the individual actually enrolls in Medicare or another group health plan.

Coordination with ARRA

The Pennsylvania Mini-COBRA law requires that employees who are involuntarily terminated between July 10, 2009 and December 31, 2009 must be offered a “mini-COBRA subsidy” equal to 65% of the premium (the same subsidy found in ARRA). It is important to note that unlike ARRA, where the 65% subsidy is advanced by the employer (and recouped through future payroll tax credits), the Pennsylvania Mini-COBRA law requires healthcare insurers to advance the 65% subsidy and recover it from the insurer’s payroll tax deposits. Finally, since the Pennsylvania Mini-COBRA law is new, it does not contain a second-chance election provision.

Next Steps

Small employers with medical, hospital, or surgical benefits that are insured under Pennsylvania law should be certain to discuss this new law with their insurers in order to determine that the insurers will be able to handle the new Pennsylvania Mini-COBRA requirements and also to determine their obligations under the new law. Small employers should also determine whether their insurers will be able to supply appropriate Pennsylvania Mini-COBRA election forms, or whether the insurer will use the Model notice found online at

http://www.ins.state.pa.us/ins/lib/ins/whats_new/employee_model_notice_final070909.doc.

If you have any questions concerning the information in this LawFlash, please contact any of the following Morgan Lewis attorneys:

Chicago

David Ackerman	312.324.1170	dackerman@morganlewis.com
Andy R. Anderson	312.324.1177	aanderson@morganlewis.com
Brian D. Hector	312.324.1160	bhector@morganlewis.com

Dallas

Riva T. Johnson	214.466.4107	riva.johnson@morganlewis.com
John A. Kober	214.466.4105	jkober@morganlewis.com
Heath A. Miller	214.466.4118	hmiller@morganlewis.com
Erin Turley	214.466.4108	eturley@morganlewis.com

New York

Craig A. Bitman	212.309.7190	cbitman@morganlewis.com
Gary S. Rothstein	212.309.6360	grothstein@morganlewis.com

Palo Alto

S. James DiBernardo	650.843.7560	jdibernardo@morganlewis.com
Zaitun Poonja	650.843.7540	zpoonja@morganlewis.com

Philadelphia

Robert L. Abramowitz	215.963.4811	rabramowitz@morganlewis.com
I. Lee Falk	215.963.5616	ilfalk@morganlewis.com
Amy Pocino Kelly	215.963.5042	akelly@morganlewis.com
Robert J. Lichtenstein	215.963.5726	rlichtenstein@morganlewis.com
Joseph E. Ronan, Jr.	215.963.5793	jronan@morganlewis.com
Steven D. Spencer	215.963.5714	sspencer@morganlewis.com
Mims Maynard Zabriskie	215.963.5036	mzabriskie@morganlewis.com
David B. Zelikoff	215.963.5360	dzelikoff@morganlewis.com

Pittsburgh

Lisa H. Barton	412.560.3375	lbarton@morganlewis.com
John G. Ferreira	412.560.3350	jferreira@morganlewis.com
Lauren Bradbury Licastro	412.560.3383	llicastro@morganlewis.com
R. Randall Tracht	412.560.3352	rtracht@morganlewis.com

Washington, D.C.

Jessica R. Bernanke	202.739.5447	jbernanke@morganlewis.com
Althea R. Day	202.739.5366	aday@morganlewis.com
Benjamin I. Delancy	202.739.5608	bdelancy@morganlewis.com
David R. Fuller	202.739.5990	dfuller@morganlewis.com
Mary B. (Handy) Hevener	202.739.5982	mhevener@morganlewis.com
Dean R. Morley	202.739.5989	dmorley@morganlewis.com
Gregory L. Needles	202.739.5448	gneedles@morganlewis.com

About Morgan, Lewis & Bockius LLP

Morgan Lewis is an international law firm with more than 1,400 lawyers in 22 offices located in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

IRS Circular 230 Disclosure

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. For information about why we are required to include this legend, please see <http://www.morganlewis.com/circular230>.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2009 Morgan, Lewis & Bockius LLP. All Rights Reserved.