

DOL Issues Details of Appeal Process for COBRA Subsidy Denials & IRS Posts Additional Website Q&As

The American Recovery and Reinvestment Act of 2009 ("ARRA"), enacted on February 17, 2009, provides a federal subsidy for COBRA premiums for certain employees and covered family members who lost or will lose coverage due to involuntary termination of employment from September 1, 2008 through December 31, 2009. Under ARRA, if an individual requests COBRA continuation coverage or the premium subsidy and the request is denied, the individual may appeal the decision to the Department of Labor ("DOL") or, in the case of COBRA continuation coverage provided pursuant to the Public Health Service Act, the Department of Health and Human Services ("HHS"). DOL or HHS must, in turn, rule on the appeal within 15 business days. If the appeal is denied, the individual can then file suit under ERISA § 502(a)(3) for treatment as an assistance eligible individual, but ARRA provides that the reviewing court is required to grant deference to DOL's or HHS's determination.

Last week, the DOL made its COBRA subsidy appeal process available online at: <http://www.dol.gov/ebsa/COBRA/main.html>. This website also provides an application form and instructions for submitting appeals by mail or fax. Key features of the application include:

- A series of questions designed to determine whether an individual is an "assistance eligible individual" for purposes of the COBRA subsidy;
- A requirement that the individual provide contact information for himself, the plan sponsor, the employer, the insurance, HMO, or benefits administrator, or another entity that may be responsible for providing COBRA coverage (such as a parent company), if applicable; and
- A requirement that the individual provide the reason for denial of COBRA continuation coverage or the premium subsidy and documentation to support the claim. Such documentation may include the COBRA election notice, COBRA election form(s), an insurance card, payroll stubs showing deductions for health benefits, documents detailing the date and circumstances for termination of employment, or documentation regarding denial of the premium subsidy.

Employers and plan sponsors may receive requests for the above information and documents from employees or from DOL and therefore may wish to coordinate with plan administrators or payroll service providers to make the information and documents available. HHS has not yet published details of its appeal process, but it is likely that it will be similar to DOL's process.

In addition, the IRS recently published additional COBRA Questions and Answers on topics including:

- Application of the COBRA subsidy to employers in Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

- When the COBRA subsidy begins and ends; and
- How an entity can claim reimbursement for the COBRA subsidy if the entity has no payroll tax liabilities.

These Questions and Answers are available at:

<http://www.irs.gov/newsroom/article/0,,id=204708,00.html>

We will provide updates on further developments. In the meantime, if you have any questions, please contact your regular Groom attorney or any of the Health and Welfare Practice Group attorneys listed below:

Jon W. Breyfogle	jwb@groom.com	(202) 861-6641
Jenifer A. Cromwell	jac@groom.com	(202) 861-6329
Thomas F. Fitzgerald	tff@groom.com	(202) 861-6621
Cheryl Risley Hughes	chughes@groom.com	(202) 861-0167
Christine L. Keller	clk@groom.com	(202) 861-9371
Tammy Killion	tkillion@groom.com	(202) 861-6328
Debbie G. Leung	dgl@groom.com	(202) 861-2601
Heather E. Meade	hem@groom.com	(202) 861-0179
William F. Sweetnam	wfs@groom.com	(202) 861-5427
Christy A. Tinnes	cat@groom.com	(202) 861-6603
Donald G. Willis	dgw@groom.com	(202) 861-6332
Brigen L. Winters	blw@groom.com	(202) 861- 6618