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CLIENT ALERT**AMERICAN RECOVERY AND REINVESTMENT ACT - COBRA CHANGES****PRACTICE AREAS**

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The American Recovery and Reinvestment Act of 2009 which President Barack Obama recently signed has made significant changes in COBRA coverage. Under the Act any employee or dependent who loses coverage under a group health plan during the period beginning September 1, 2008 and ending December 31, 2009 will be eligible for a COBRA employer subsidy if he or she is entitled to COBRA as a result of the employee's involuntary termination of employment (except for gross misconduct) or reduction of hours. The subsidy is 65% of the COBRA premium beginning in March, 2009. The maximum period of the employer subsidy is nine months. The employee or dependent will be required to pay only 35% of the COBRA premium during the nine month period of the subsidy. Employers are entitled to a refundable credit against wage withholdings and FICA payroll taxes for the subsidy.

If the employee or dependent becomes eligible for coverage under another "group health plan" or Medicare, the subsidy will cease. The employee or dependent must notify the employer if and when the employee or dependent becomes covered by another group health plan or Medicare and will be liable for 110% of the improperly paid subsidy amount if notice is not provided.

The COBRA subsidy is reduced for years in which adjusted gross income exceeds \$125,000 (\$250,000 for joint returns). The reduction occurs through a recapture mechanism which requires no action by the employer. The subsidy phases out for

taxpayers with modified adjusted gross income exceeding \$145,000 (or \$290,000 for joint filers).

Any employee who was involuntarily terminated (except for gross misconduct) on or after September 1, 2008 and prior to February 17, 2009 must be provided with a 60-day period within which to elect COBRA coverage if the employee did not elect COBRA coverage when initially eligible or did elect COBRA but subsequently terminated the coverage. Employers must notify terminated employees and other qualified beneficiaries of their rights under the Act. The notice can be provided by amending current notices or through a separate document.

The DOL is required by the Act to provide a model notice within 30 days after the date of enactment. Employers must send the notice within 60 days of the date of enactment. For terminated employees who could have but did not elect COBRA coverage, the coverage would begin March 1, 2009 but would not extend beyond the date it would have originally ended if COBRA had been elected initially. Also, employees currently on COBRA must receive notice of their right to the subsidy. In addition, current employees who are terminated before December 31, 2009 must be notified of the subsidy.

Please contact KUBASIAK, FYLSTRA, THORPE & ROTUNNO, P.C. if you have any questions regarding this newsletter, other employee benefits issues, or our other practice areas.

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