

PENNSYLVANIA MINI-COBRA:

WHAT SMALL EMPLOYERS NEED TO KNOW



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On June 10, 2009, Governor Rendell signed “Pennsylvania mini-COBRA” into law. This new legislation becomes effective on July 10, 2009, and applies to Pennsylvania employers with at least 2 but less than 20 employees on a typical business day during the preceding calendar year. These employers currently are exempt from health care continuation obligations under COBRA, the federal law enacted in 1986 and applicable to employers with 20 or more employees.

This new state law now requires small employers to offer employees and their eligible dependents the opportunity to continue group health coverage for up to nine months following a qualifying event that results in the loss of group health coverage. Among the most

common qualifying events are death of a covered employee, reduction in an employee’s hours, termination of employment other than by reason of gross misconduct, and divorce or legal separation.

The new mini-COBRA law is designed to coordinate with the federal COBRA subsidy provisions introduced by the American Recovery and Reinvestment Act of 2009. As such, a 65% subsidy provides premium assistance for individuals who are eligible for continuation coverage under mini-COBRA. The subsidy component of Pennsylvania’s mini-COBRA law continues for up to nine months and applies to individuals involuntarily terminated between July 10, 2009, and December 31, 2009.

Pennsylvania mini-COBRA vs. federal COBRA

Aside from its application to small employers, there are significant differences between Pennsylvania mini-COBRA and the federal statute, including the following:

- Health insurance continuation coverage under Pennsylvania mini-COBRA is limited to 9 months following a qualifying event; coverage under COBRA is available for 18 months and may be extended in certain circumstances.
- Pennsylvania employers may charge up to 105% of the monthly premium for continuation coverage; COBRA permits employers to charge no more than 102% of the premium. (The add-on, in each case, is intended to defray the employer’s administrative expense.)
- Under Pennsylvania law, eligible individuals must have been covered by the group health plan for at least three months before the qualifying event occurs; federal law merely requires that the individual be covered by the health plan on the day before the qualifying event.
- Pennsylvania mini-COBRA coverage ends once a covered individual becomes *eligible* for Medicare

or another group health plan, while COBRA rights end only after the covered individual actually *enrolls* in another group health plan or Medicare.

- Pennsylvania law applies only to insured arrangements, including hospital and surgical policies; federal COBRA applies to both insured and self-insured group health programs.
- Under mini-COBRA, the obligation for payment of the 65% premium subsidy and, in turn, entitlement to the corresponding tax credit, rest with the insurer providing the group health coverage. Conversely, those employers which are subject to COBRA, generally have to pay the 65% premium subsidy and seek reimbursement through the corresponding tax credit.

Employer Considerations

With the introduction of Pennsylvania mini-COBRA, small employers now are faced with additional obligations and concerns surrounding the termination of employees. Mini-COBRA, however, may present an opportunity to benefit employees, particularly in situations of layoffs, which may warrant special consideration as to the timing of employee terminations.

Consider, for example, the mini-COBRA impact on Employee A, who is terminated on December 31, 2009, as compared to Employee B, who is terminated on January 1, 2010. Both A and B are covered employees who experience a qualifying event that gives rise to mini-COBRA continuation coverage. Based solely on their termination dates, Employee A is eligible for the 65% premium assistance subsidy whereas Employee B is not and must pay the entire monthly premium. Assume that the monthly premium for both employees, should they elect continuation coverage, is \$600. Employee A will be responsible for \$210 per month (35% of the monthly premium), for the duration of the continuation coverage (not to exceed nine months). Employee B will be responsible for the entire \$600 per month for the duration of the continuation coverage. Since, under Pennsylvania mini-COBRA, it is the insurer, rather than the employer which bears responsibility for the 65% premium subsidy, an employer may provide a valuable benefit to those affected by the layoff, at no out-of-pocket cost, simply by timing the layoff properly.

What Now?

Pennsylvania employers with fewer than twenty employees should consult with legal counsel and their

insurance carriers to ensure that they are prepared to meet the mini-COBRA compliance requirements by July 10, 2009. Additionally, it should be noted that Pennsylvania mini-COBRA obligates both insurers and employers to notify covered individuals of their rights. The notice may be based on the model notice provided by the U.S. Department of Labor, but that model must be modified to conform to the provisions of the Pennsylvania law and to include information regarding the subsidy provided under the American Recovery and Reinvestment Act of 2009.

Insurers must provide notice of the new mini-COBRA law to all policy holders within 45 days of the effective date of the law. Following a qualifying event, employers must notify each covered employee and beneficiary, who in turn, must notify the employer / plan administrator within 30 days of his or her decision to elect continuation coverage. The administrator then has 14 days to notify the insurer, if coverage is to be continued.

For more information, please contact Seth I. Corbin, Esquire at 412-394-5530 or scorbin@foxrothschild.com or your attorney in the Pittsburgh office of Fox Rothschild LLP.



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