

Pennsylvania Adopts "mini-Cobra" Law for Small Employers

Legal Alert

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Effective July 10, 2009, employers in Pennsylvania with fewer than 20 employees (but more than one) will be covered by a new "mini-COBRA" law requiring health care insurers - not employers -- to make continuation coverage available to certain terminated employees, and their covered dependents.

Governor Rendell signed the law this week, after the General Assembly passed it in response to the federal American Recovery and Reinvestment Act of 2009 (the "ARRA"). It covers employees of employers that are too small to be covered by the federal COBRA law, which applies only to employers with 20 or more employees. Eligible employees who elect coverage under Pennsylvania's new mini-COBRA law can be covered for up to nine months following a qualifying event.

Pennsylvania's new "mini- COBRA" law differs from the federal law in several important respects:

- **Self-insured plans not covered.** The Pennsylvania law applies only to insured arrangements, and not self-insured programs; whereas COBRA covers both.
- **Nine-month limit.** Pennsylvania's law requires continuation coverage for up to nine months (whereas COBRA coverage is generally capped at 18 months, and may extend up to 36 months, in certain circumstances).
- **Eligibility for another plan ends coverage.** Under the Pennsylvania law, coverage ends when a covered person becomes eligible for Medicare or another group health plan or fails to verify that he or she is not eligible for coverage under another group health plan (whereas under COBRA, the coverage ends when a covered person actually enrolls in Medicare or another group plan).
- **Insurers have more compliance obligations than employers.** The insurers have most of the compliance obligations under Pennsylvania's new law (whereas under COBRA, the employer is burdened with these tasks).
- **Three months of preceding coverage required.** To be eligible for the Pennsylvania mini-COBRA continuation coverage, the employee, spouse, or dependent child must have been covered for at least three months before the qualifying event occurs (whereas COBRA requires that the person only be covered by the plan on the day before the qualifying event).
- **Premium limit lower.** The new "mini-COBRA" law defines a qualifying event the same way as COBRA does; however, the Pennsylvania monthly premium charge may not exceed 105 percent of the group health plan monthly costs (COBRA allows a 102 percent charge.)
- **Conversion option required at end.** In Pennsylvania, at the end of the "mini-COBRA" continuation period, insurers are required to offer a conversion option for an individual policy at underwritten rates. COBRA has no such requirement.

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Covered employers will welcome the fact that under Pennsylvania's new "mini COBRA" rules, the insurer is responsible for sending out required notices and forms to eligible employees and covered dependents. Employers simply must notify the plan administrator within 30 days when a covered person experiences a qualifying event. The covered person then has 30 days to make his or her election. The plan administrator then has 14 days to notify the insurer of the beneficiary's election.

Federal subsidy applies. Pennsylvania's "mini-COBRA" law includes a 65 percent employee subsidy that is similar to the ARRA provisions recently applied to the federal COBRA law, in cases in which a covered employee is involuntarily terminated for reasons other than gross misconduct. In such a case, the cost of continuation coverage is subsidized for up to nine months (or shorter if the covered person becomes eligible for Medicare or another group health plan). The 65 percent subsidy is advanced by the insurer (not the employer, as ARRA mandates for COBRA). The subsidy will apply to individuals involuntarily terminated before January 1, 2010, provided an election to continue coverage is also made within this time frame. The new "mini- COBRA" continuation coverage rules will continue to apply after 2010, but without the 65 percent subsidy for employees who are involuntarily terminated, unless the ARRA subsidy is extended.