

We've obtained further information regarding the effects of the new stimulus package and COBRA extension coverage. Please see important update information in red font below.

STIMULUS PACKAGE CREATES NEW EMPLOYER OBLIGATIONS WITH REGARD TO COBRA

President Obama signed the American Recovery and Reinvestment Act of 2009 on February 17, 2009. As you may know, it is a 600+ page new law intended to stimulate growth and jobs in light of the economic downturn. Part of the law directs the creation of Recovery.gov – a website that will be updated with the new requirements, including issuance of contracts needing new employees.

WHAT DOES THIS MEAN FOR EMPLOYERS WITH REGARD TO COBRA??

For employers and HR professionals specifically, Title III of the Act – Health Insurance Assistance for the Unemployed – provides offsets for **COBRA coverage to employees who have been involuntarily terminated (fired or laid off, unless terminated by gross misconduct) between September 1, 2008 and December 31, 2009.** Some of the specifics include:

Although discharge for misconduct is not statutorily defined, courts limited the term misconduct to: ...conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior the employer has the right to expect; or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or the employee's duties and obligations. Mere inefficiency, unsatisfactory conduct, failure in good performance due to inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not deemed "misconduct."

The employee's inability to perform essential job duties generally does not meet the definition of "misconduct"

1. Individuals who became eligible for COBRA between September 1, 2008 and February 17, 2009, but did not elect coverage, **have 60 days to elect coverage dating back to their original eligibility date.** Your health plan administrator must notify these eligible employees of this option.
2. Employers must either amend or include an additional notice with COBRA notifications to employees. The law specifies the content of this notification but requires the Department of Labor and other agencies to coordinate efforts to prepare model notifications within the next 30 days. No models yet exist, please watch for future updates for this form!
3. The bill provides COBRA payment assistance for up to 65% of the premium for employees laid off by their employers, **starting March 1, 2009.** This payment will be offset through payroll taxes and reimbursement to certain employers by the federal government: ***If an individual had paid the full COBRA premium for the first 60 days after February 17, 2009 (the date the bill was enacted), employers must reimburse the individual for any premium paid in excess of 35% or provide a credit to the individual to reduce one or more of the individual's premium payments. These employers will be reimbursed by the federal government.***

Employers with 2-19 employees covered by Cal-COBRA are impacted by this new law as well. However, the premium repayment will be handled through your insurance carrier instead of through your payroll system.

******Be sure to contact your benefits provider for more details regarding compliance with these new requirements and keep an eye for further notices from P•A•S******

Questions do exist regarding more detailed information about this requirement. Further information will be provided as it is released by the federal government. As always if you have any questions, please do not hesitate to contact our office at (661) 631-2165.

Thank you!

Michelle Spitzer

P•A•S Associates

1401 19th Street, Suite 235 • Bakersfield, CA 93301

Phone (661) 631-2165 • Fax (661) 631-2841 •