



Benefits Alert

Legal developments affecting employee benefits

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Stimulus bill ushers in sweeping new COBRA requirements

By Kate Ulrich Saracene and Eric Paley

This past Tuesday, President Obama signed into law the stimulus bill, officially titled the American Recovery and Reinvestment Act of 2009 (Act). The Act contains the most significant changes to group health plan continuation since the Consolidated Omnibus Budget Reconciliation Act (COBRA) was passed in 1985.

Notably, the Act provides a temporary and limited premium subsidy to individuals who qualify for continuation coverage as the result of a covered employee's involuntary termination of employment between September 1, 2008, and December 31, 2009. Where the covered employee's involuntary termination occurred before the Act's February 17, 2009, enactment date, qualifying individuals are offered a "second chance" to enroll in COBRA during a special election period. The Act also permits certain individuals eligible for the subsidy the option to enroll in a less expensive plan offered by the plan sponsor.

While these new provisions ostensibly serve the noble purpose of helping more individuals afford continued health care coverage during these turbulent economic times, they are certain to increase administrative burdens for employers and plan administrators. In fact, many of the changes require immediate attention. As such, employers must act now to ensure they comply with the Act.

On February 26, 2009, at 1:00 p. m. EST/10:00 a. m. PST, Nixon Peabody will host a webinar entitled, "Special Briefing: COBRA Changes Under the American Recovery and Reinvestment Act." If you would like to participate in this webinar, please RSVP to Kathleen Tayman, ktayman@nixonpeabody.com to receive the link to join us.

Eligibility for COBRA subsidy

The Act provides certain "assistance-eligible individuals" with a subsidy covering 65% of their premiums for continuation coverage in a group health plan. An assistance-eligible individual may be a covered employee, or a covered employee's "qualified beneficiary" (i.e., a covered spouse or dependent child), who became eligible for COBRA coverage due to involuntary termination of the covered employee's employment, if the termination occurs between September 1, 2008, and December 31, 2009.

The subsidy is available not only to individuals receiving continuation coverage under the federal COBRA statute, but also to those receiving COBRA-like continuation coverage pursuant to “comparable” statutes, such as state “mini-COBRA” laws or similar laws providing continuation coverage for state and local government employees. For simplicity, this alert uses the term “COBRA coverage” throughout to encompass continuation coverage under any of these statutes.

All types of group health plan premiums (e.g., medical, dental, vision, etc.) covered by COBRA are eligible for the subsidy, with the exception of health flexible spending accounts offered under a cafeteria plan. It appears that the subsidy will apply regardless of the level of coverage selected by the assistance-eligible individual (e.g., single, two-party, family, etc.).

The subsidy does not last for the entire period during which the individual is eligible for COBRA continuation coverage. It ends at the sooner of nine months of subsidized coverage, or when the individual becomes eligible for coverage under any other group health plan (as an employee or dependent) or Medicare, when the individual’s COBRA coverage rights expire, or when the individual fails to pay required premiums. Individuals are required to notify their group health plan in writing if they become eligible for other coverage that would disqualify them from receiving the subsidy, and they face penalties for failing to do so equal to 110% of the subsidy provided on their behalf after they lost eligibility. Other coverage that provides only dental, vision, counseling, or referral services (or a combination thereof), coverage under a flexible spending arrangement, or limited coverage at certain on-site medical facilities maintained by the employer does not result in disqualification from receiving the subsidy.

Individuals who apply for the subsidy, but are denied eligibility by the group health plan, may appeal to the Department of Labor (DOL), or to the Department of Health and Human Services in the case of continuation coverage provided under the Public Health Service Act. The applicable agency must provide an expedited review of these appeals and rule on eligibility within 15 business days of receiving the application for review. The specifics of this appeal procedure are yet to be prescribed by the DOL.

The subsidy generally will not be considered taxable income to assistance-eligible individuals. However, any assistance-eligible individual who is a “high-income individual,” or the spouse or dependent of a high-income individual, may have his or her subsidy subject to “recapture.” The mechanism for repayment is an increase in that individual’s income tax liability for the year, equal to the amount of the subsidy. A “high-income individual” is a single taxpayer with modified adjusted gross income (AGI) in excess of \$145,000 (\$290,000 for joint filers). The subsidy “recapture tax” begins to phase in for a single taxpayer with modified AGI in excess of \$125,000 (\$250,000 for joint filers).

A plan administrator must allow an assistance-eligible individual who is also a high-income individual to permanently waive the subsidy, in a manner yet to be prescribed by the Secretary of the Treasury. The individual would, thus, pay the full COBRA premium charged by the group health plan. This provision is intended to allow individuals who are *certain* that their modified AGI prevents them from being entitled to any subsidy to decline the subsidy and avoid being subject to the recapture tax. However, the waiver is irrevocable, and a high-income individual who experiences an unexpected drop in modified AGI (for example, due to the unexpected loss of a spouse’s income) may regret his or her decision. This waiver is made separately by each qualified beneficiary.

A second bite at the apple

A person who would be an assistance-eligible individual, but did not have COBRA coverage in effect on the Act's February 17 enactment date, must be provided a second chance to elect coverage. This special election period began on the date of enactment and ends 60 days after the plan sponsor provides the required notices to the eligible individuals. Individuals who initially elected COBRA coverage but were no longer enrolled on the date of enactment (because, for example, coverage ended due to non-payment of premiums) are also eligible for this special election period.

This special election period is available only for group health plans covered by the COBRA continuation coverage requirements of the Internal Revenue Code, the Employee Retirement Income Security Act (ERISA), Title 5 of the United States Code (relating to plans maintained by the federal government), and the Public Health Service Act (PHSA). The special election period is not available for those plans that are covered only by "comparable" COBRA-like statutes, such as state mini-COBRA laws, which happen to be eligible for the subsidy.

Coverage elected during this new election period (and not within the original COBRA election period) will not be retroactive to the date of the qualifying event, but will become effective on the first day of the first COBRA coverage period that begins on or after enactment of the Act (i.e., March 1st for group health plans that base COBRA coverage periods on a calendar month). For an individual electing coverage during the special election period, the period of time between the qualifying event and enactment of the Act is disregarded for purposes of determining if there was a 63-day break in coverage under the HIPAA creditable coverage rules, which govern whether a group health plan can impose pre-existing condition limitations on the individual's coverage.

Although the special election period provides qualifying individuals a second opportunity to secure COBRA coverage, it does not extend the maximum coverage period. The maximum coverage period continues to be measured from the date of the original qualifying event (e.g., 18 months following an involuntary termination, or the date of the loss of coverage resulting from such termination, if later).

For example, if a covered employee was involuntarily terminated on September 20, 2008, but did not elect COBRA coverage and is not eligible for coverage under another group health plan, he or she would have 60 days from notification of the new special election right to elect COBRA coverage. Had the covered employee elected COBRA coverage when first eligible, the coverage would have commenced on October 1, 2008, and ended March 31, 2010. Hence, the coverage elected during the special election period would begin the first day of the coverage period following enactment (i.e., March 1, 2009), and would cease March 31, 2010.

The Act does not specify when individuals electing COBRA coverage during the special election period must pay their initial premiums. Unless this is addressed in subsequent regulations or other guidance, plan sponsors should assume that the normal timeframes apply—that is, that the premium must be paid within 45 days of the date COBRA coverage is elected, and any premium payment must be treated as timely if it is paid within 30 days after the date the premium is due.

New plan enrollment option

Until now, individuals generally have been limited to electing continuation of the same coverage they had in effect on the day before the qualifying event. The Act provides flexibility for assistance-eligible individuals to enroll in coverage under another medical plan offered by the plan sponsor within 90 days of notice of this plan enrollment option. The medical plan options must be limited to those available to active employees, and only those with premiums less than or equal to the premium for the coverage in which the individual was enrolled at the time of the qualifying event. The alternate coverage may not be coverage providing only dental, vision, counseling or referral services (individually or in combination), coverage under a flexible spending arrangement, or coverage that provides services at certain on-site medical facilities maintained by the employer. Plan sponsors are permitted, but not required, to offer this option to assistance-eligible individuals, including those who already have COBRA coverage without the need for the special election period.

New notices and forms

New notices must be provided to alert covered employees and their qualified beneficiaries of these changes. Plan sponsors have the option of modifying their current notices, or continuing to use their current notices but pairing them with a separate document notifying individuals of the availability of the subsidy and other new rights. New forms will also need to be created for establishing eligibility for the subsidy.

All individuals who have incurred a COBRA-qualifying event since September 1, 2008, must be provided with new notices containing the following information:

- A description, displayed in a prominent manner, of the availability of the reduced premium (subsidy) and the conditions on entitlement to the reduced premium
- The forms necessary for establishing eligibility for a premium reduction (subsidy)
- The option to enroll in different coverage, if applicable
- The name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with the premium reduction (subsidy)
- A description of the obligation of the assistance-eligible individual to notify the plan in writing if the individual becomes eligible for coverage under another group health plan or Medicare, which would disqualify the individual from receiving the subsidy, and the penalty for failure to do so

A new notice must be provided to all covered employees and their beneficiaries who had a COBRA-qualifying event during the applicable time period, and not just to individuals who were involuntarily terminated.

Practically speaking, there are three separate classes of individuals that need to be notified of these changes: (1) covered employees and qualified beneficiaries with a qualifying event that occurred between September 1, 2008, and the date of enactment who currently have COBRA coverage; (2) covered employees and qualified beneficiaries with a qualifying event that occurred between September 1, 2008, and the date of enactment who do not currently have COBRA coverage; and (3)

covered employees and qualified beneficiaries with a COBRA-qualifying event that occurred or occurs on or after the date of enactment.

With respect to the first and second groups—that is, those who incurred a COBRA-qualifying event between September 1, 2008, and the date of enactment—the Act provides a 60-day period for the plan administrator to provide updated notices (i.e., by April 18). In addition to the information listed above, individuals in the second group must receive a description of the special election period and any forms necessary for applying for coverage.

With respect to the third group, however—that is, assistance-eligible individuals for whom a covered employee incurs a qualifying event on or after February 17—the Act does not contain any specific grace period for implementing new notices. Thus, it appears that plan administrators are required to update their COBRA notices immediately, and to provide the updated notices to all individuals as they become eligible for COBRA within the standard 44-day timeframe. (Employers have 30 days to notify the COBRA administrator of a qualifying event, and the COBRA administrator has 14 days thereafter to send the notice to the covered employee and qualified beneficiaries.)

The Act directs the Secretary of Labor to provide model notices within 30 days of enactment of the Act (i.e., by March 19). As noted above, however, some notices may need to be sent before that time, and a plan administrator who waits for the model notice may be too late. There are several other disadvantages for plan administrators who wait for the model notices—for example, they may find themselves faced with a last-minute scramble to pass those notices along to covered employees and beneficiaries, they may face more serious adverse selection if individuals have more time to wait and see whether they need to enroll for coverage, and they may have to deal with more retroactive corrections for premiums that have been overpaid in the interim.

Although not specifically required by the Act, plan administrators are well-advised to include information regarding the right to appeal denials of a claim for subsidy to the Department of Labor, both in the notices and in any forms used for establishing eligibility for the subsidy. Plan administrators may also want to include notices and forms for high-income individuals to waive the subsidy.

Grace period and refunding premiums

Recognizing that it is impracticable (if not impossible) to update monthly invoices to reflect the subsidy immediately, the Act provides a grace period of sorts for plan sponsors to arrange for correct invoicing based on the new premium reductions. The Act provides that assistance-eligible individuals may pay the full COBRA premium for one or two periods of coverage after enactment (in most cases, this means premiums for March and April), and that if they do, the plan administrator must either credit the subsidized portion of the premium against future COBRA premiums, or refund the subsidized portion to the individuals within 60 days. The plan administrator may use the credit method if they reasonably expect the overpayment to be fully applied to future COBRA premiums within 180 days. If at any point during the 180-day period it is no longer reasonable to believe that such credit will be used, payment equal to the remaining credit must be made within 60 days.

Collecting the subsidy

Assistance-eligible individuals are responsible for paying only 35% of the premium to their group health plan. The group health plan cannot claim a subsidy until after it has actually received the 35% premium from the individual or someone other than the employer on the individual's behalf (e.g., payment from a parent, charity, etc.).

The 65% subsidy is generally payable to the entity to which premiums are payable—which may or may not be the employer sponsoring the plan. The Act outlines a hierarchy for determining which entity is responsible for collecting the subsidy. In the case of a multiemployer plan, it is the plan; in the case of a single-employer plan that either is subject to COBRA (e.g., employer normally employs 20 or more employees) or is self-insured, it is the employer; in the case of any other single-employer plan, it is the insurance company that must advance the premiums and apply for reimbursement.

Subsidies will be “paid” to these entities in the form of payroll tax credits (toward the entity's wage withholding or FICA taxes). To the extent the entity's payroll taxes are less than the claimed subsidy, the entity will be credited or refunded the difference in the same manner as if it had overpaid its payroll taxes. To the extent the entity overstates its claim to a subsidy, the overstatement will be treated as an underpayment of the entity's payroll taxes, which may be assessed and collected by the Secretary of the Treasury.

Entities applying to collect the subsidy will be required to submit: (1) reports attesting to the involuntary termination of each covered employee for whom they are claiming a subsidy; (2) a report of the amount of payroll taxes offset for the reporting period and the estimated offsets of such taxes for the subsequent reporting period in connection with subsidy reimbursements; and (3) a report containing the tax identification numbers of all covered employees, the amount of subsidy reimbursed with respect to each covered employee and qualified beneficiaries, and a designation with respect to each covered employee as to whether the subsidy reimbursement is for coverage of one individual, or two or more individuals.

Special situations and open issues

The Act leaves a host of unanswered questions, which will likely be addressed in forthcoming regulations, guidelines, and/or model notices. This section touches on a few of the more significant outstanding issues.

“Involuntary termination”

The Act does not include a definition of the term “involuntary termination.” The question of whether an individual was involuntarily terminated can be complicated by issues such as allegations of constructive discharge, permitted resignations, or questions of whether participation in voluntary termination programs was truly voluntary. The Act also does not contain any exclusion for individuals who were terminated for cause. However, because its provisions are limited to individuals who are otherwise eligible for COBRA coverage, the normal exclusion for employees terminated due to “gross misconduct” would apply. Whereas in the past employers may have thought they were limiting potential liability by erring on the side of offering COBRA coverage to all employees regardless of the reason for their termination, without trying to ferret out whether an individual was let go due to “gross misconduct,” such assessments carry new importance now that a separate determination is required to assess whether the individual is eligible for a subsidy. Claiming

a subsidy for an individual who does not qualify for COBRA due to a termination for gross misconduct would result in underreporting of payroll taxes, with the potential for associated penalties. Employers faced with this dilemma may be well served to offer COBRA coverage to the individual, but deny them the subsidy, thus punting the final decision to the Department of Labor and its expedited appeal process.

Multiemployer plans and fully-insured arrangements

The Act provides that in certain cases, it is the multiemployer plan or the insurance company that is responsible for advancing the premiums and applying for reimbursement through the subsidy program. This arrangement will create special coordination issues, because employers will need to provide the multiemployer plan or insurer a list of individuals who were “involuntarily terminated” and therefore eligible for the subsidy. It is not clear who is ultimately responsible for making that determination, but it would seem that whichever entity is applying for the subsidy, and therefore making the required attestation that individuals are eligible for the subsidy, will ultimately be responsible for making the determination regarding what is an “involuntary termination” or “gross misconduct.” This will require a level of coordination that may be new to the employer and the multiemployer plan or insurer. Also, it is likely that multiemployer plans and insurers may experience cash flow issues if they have to advance premiums to assistance-eligible individuals that far exceed their payroll tax liability and have to wait for the tax refund process to run its course before being reimbursed. Furthermore, employers may face problems to the extent that insurance companies try to refuse to accept an individual with rights to the special election period. Since the Act does not specifically direct insurers to provide coverage, they may try to pass the liability to the employer to self-insure.

The special issues surrounding multiemployer plans are expected to be the topic of future guidance from the Secretary of the Treasury. There is no indication in the Act whether there will be additional guidance regarding coordination with insurance companies.

Employers covered by state “Mini-COBRA” laws

Small employers who are exempt from COBRA because they have fewer than 20 employees may also be exempt from certain provisions of the Act. For example, they will not have to offer individuals who had declined or lost COBRA coverage a special election period. However, the subsidy provisions reach beyond the federal COBRA law. The subsidy applies to health plan coverage continued under “comparable” statutes, such as coverage provided by state and local governments or required under state mini-COBRA laws. Further analysis will be required to determine which of these “mini-COBRA” laws are considered “comparable” and subject to the subsidy.

Employers offering coverage for domestic partner or same-sex spouses

The subsidy apparently does not apply to the cost of any COBRA-like coverage employers voluntarily elect to offer to domestic partners, civil union partners, or same-sex spouses, except perhaps if the individual is a tax dependent of the covered employee (under Section 152 of the Internal Revenue Code), or if provision of the continuation coverage is required by a state mini-COBRA law. It is also arguable that the COBRA subsidy could apply to any two-party or family coverage elected by a covered employee who is an assistance-eligible individual (even if it covers a same-sex domestic partner, civil union partner or spouse), though the domestic partner or any other person who is not a qualified beneficiary under COBRA would not have an independent right to the subsidy in the event the covered employee fails to elect coverage. Employers offering such coverage

will want to seek legal counsel regarding how the subsidy applies based on their specific plan design and coverage under mini-COBRA statutes, and will want to ensure that their notices, forms, and invoices clearly reflect these consequences.

Recent retirees

Covered employees who retired from employment since September 1, 2008, will also need to receive the required notices, including the notice of the special election period (if applicable). If an employer offers retiree health coverage, these notices should also explain the options available to retirees, and their consequences. For example, it is a common feature of employer-sponsored retiree health care plans that if the retiree does not elect coverage at the first opportunity (e.g., if the retiree elects COBRA continuation coverage upon retirement) that the retiree waives the right to future retiree health plan coverage. Any such provisions should be spelled out in the required notices.

Employer-subsidized COBRA benefits

It is not entirely clear how the subsidy will operate in the case of employers that already provide subsidized COBRA coverage (e.g., in connection with severance benefits). What is certain is that if an employer pays 100% of the COBRA premium, then the employer cannot claim any subsidy credit. What is less certain, however, is how the subsidy will operate where the employer subsidizes a portion, but not the entire amount, of the COBRA premium—a far more likely scenario.

The confusion stems from the requirement that assistance-eligible individuals pay 35% of the “premium” —but the term “premium” is undefined in the Act. One interpretation could be that assistance-eligible individuals must pay 35% of the “applicable premium”—a term defined in the already-existing federal COBRA statute to mean the “cost to the plan” for a period of coverage, “without regard to whether such cost is paid by the employer or employee.” Under this interpretation, the subsidy would only be available if the individual paid 35% of the entire cost of coverage. For example, if the entire cost of coverage were \$10,000, and the employer subsidized 90%, then the individual would not be eligible for the subsidy because they would only be paying 10% of the “applicable premium.”

The better interpretation, we think, is that assistance-eligible individuals must pay only 35% of whatever premium amount the employer charges for COBRA coverage. This interpretation is supported by the Joint Explanatory Statement issued by Congress, which indicates that “the amount of the premium used to calculate the reduced premium is the premium amount that the employee would be required to pay for COBRA continuation coverage absent this premium reduction (e.g., 102 percent of the ‘applicable premium’ for such period).” If Congress had intended that assistance-eligible individuals pay 35% of the “applicable premium” as defined in COBRA, then they likely would have used that term in the Act. Likewise, if that were their intent, the Joint Explanatory statement probably would have used the term “applicable premium” in the main part of the explanation, instead of listing it as a parenthetical example.

Continuing the example above, then, if the “applicable premium” is \$10,000, and the employer provides a 90% subsidy, then the “premium” charged to the assistance-eligible individual is \$1,000. Under this latter interpretation, the individual would be deemed to have paid 100% of “such premium” if they remit \$350 as payment, and the remaining \$650 will be reimbursed in the form of the subsidy. The employer would not be allowed to claim reimbursement for the other \$9,000 that it subsidized.

Employers that currently subsidize COBRA coverage may therefore want to consider whether to make prospective changes to their policies regarding COBRA subsidies, in light of the Act.

Other nuances

The Act contains other provisions that affect only a small subset of employers. For example, special rules apply to the subsidy for individuals in U.S. possessions such as Guam, Puerto Rico, or the U.S. Virgin Islands. There are also special provisions affecting the length of COBRA continuation coverage periods for certain individuals receiving Trade Act Assistance (TAA) benefits or pension benefits from the Pension Benefit Guaranty Corporation (PBGC).

Getting ready

Although many employers delegate COBRA compliance headaches to outside administrators, they are not going to be able to sit idly by this time. All employers need to take steps now to prepare for these changes and determine how the Act applies to their particular situations.

Employers and administrators should begin focusing on the following issues. Depending on their outsourcing arrangements, employers will need to address some of these issues on their own, while others will require coordination with their COBRA, health plan and/or payroll administrators, and their legal counsel.

- Decide whether you will adopt the plan enrollment option, permitting assistance-eligible individuals to enroll in another coverage option at the time they elect COBRA coverage. Because the option applies only to assistance-eligible individuals, and not to all individuals with a COBRA qualifying event, this option may prove to be one whose administrative difficulties outweigh its benefits.
- Determine whether you (or your COBRA administrator, if applicable) will develop your own COBRA notices and forms or whether you will wait for the model notices from the Department of Labor (expected by March 19). Decide whether you plan to revise existing COBRA election notices or pair them with supplemental notices explaining these new rights.
- Ensure that any covered employees or qualified beneficiaries who have a qualifying event on or after February 17 receive updated COBRA notices and election forms within the normal timeframes. Coordinate this effort with your COBRA administrator, if applicable. Your administrator may request that you suspend sending any new notifications of qualifying events for 30 days from enactment, to give them more time to respond (because their obligation is to send compliant notices within 14 days of being notified of a qualifying event).
- Identify all covered employees and their qualified beneficiaries who have had a COBRA-qualifying event between September 1, 2008, and February 17, 2009. Prepare an address file for sending them new COBRA notices—regardless of whether their qualifying event was an involuntary termination of employment or whether they have COBRA coverage currently—by April 18, 2009.
- Identify which members of this group do not currently have COBRA coverage and are therefore entitled to the special election period, and prepare to send them the additional notices and forms required for this “second chance enrollment.” Make sure you (or your

administrator) can track when their COBRA rights are exhausted based on their qualifying event, rather than the date their coverage begins.

- Make necessary revisions to related documents. Draft amendments to plan documents and prepare summaries of material modifications (SMMs) if necessary. Consider revising your initial COBRA notices (sent when plan coverage first begins), summary plan descriptions (SPDs), and any other participant communications such as websites, to be consistent with these changes. Revise HIPAA certificates of creditable coverage to reflect that any coverage gap between the date of the qualifying event and the date COBRA coverage begins will not be considered a break in coverage for purposes of pre-existing condition rules, for those enrolling in COBRA during the special election period.
- Develop procedures for calculating and invoicing the new premium reductions for assistance-eligible individuals. Determine how you (or your administrator) will credit or refund premium overpayments that may be paid in the interim while these new procedures are being developed. Make sure there are procedures to increase premiums to normal levels after the individual's right to a subsidy has run out, and to send reminder notices to assistance-eligible individuals shortly before their subsidy is exhausted. Ensure you can administer charging a full premium to a high-income individual who waives the subsidy.
- Consider reviewing your plan's cost of coverage to ensure COBRA "applicable premiums" are set correctly, and consider whether to make any prospective changes to COBRA subsidies you may provide (for example, in conjunction with severance packages).
- Develop procedures for determining which covered employees are "involuntarily terminated" within the meaning of the Act, and how that status will be recorded in employee records. This may require case-by-case review to determine which involuntary terminations were due to "gross misconduct" that would render them ineligible for the subsidy.
- Coordinate efforts to claim the subsidy with your payroll provider, multiemployer plan, and/or health insurance companies. If one of these external entities will be responsible for claiming the subsidy, develop a system for notifying them of which covered employees were involuntarily terminated, and therefore which covered employees and eligible beneficiaries are "assistance-eligible individuals."
- If you provide coverage to domestic partners (or civil union partners or same-sex spouses), have employees in states with a mini-COBRA laws, or have employees in U.S. possessions such as Guam or Puerto Rico, work with your legal counsel to determine whether and how the subsidy applies to those situations. If any of your covered employees are receiving Trade Act Assistance (TAA) or have non-forfeitable rights to receive pension benefits from the PBGC, adjust administrative procedures to reflect the extended maximum COBRA continuation coverage period that may apply to the covered employee or their qualified beneficiaries. In any of these scenarios, or if you provide retiree health care coverage, be sure to add clarifying language to your COBRA notices to explain the nuances applicable to these situations.

Conclusion

The Act's new requirements, which are quite complicated and in some cases unclear, will require immediate action by most employers offering group health insurance. Employers should stay tuned over the course of the next several weeks as the new requirements are clarified and additional guidance and model notices are issued pursuant to the Act.

Meanwhile, employers are encouraged to contact their COBRA administrators, payroll administrators, multiemployer plans or health insurance companies regarding their plans to address these COBRA changes and any additional administrative costs and fees associated with administering them.

Nixon Peabody's employee benefits team is working diligently to prepare model notices and forms and to help our clients wade through the complexities of how the Act will apply in their specific situations. For more information or for assistance, please contact your regular Nixon Peabody attorney or one of the following members of our employee benefits team:

- David S. Foster at 415-984-8331 or dfoster@nixonpeabody.com
- Christian D. Hancey at 585-263-1147 or chancey@nixonpeabody.com
- Sherwin Kaplan at 202-585-8224 or skaplan@nixonpeabody.com
- Brian Kopp at 585-263-1395 or bkopp@nixonpeabody.com
- Thomas J. McCord at 617-345-1337 or tmccord@nixonpeabody.com
- Eric Paley at 585-263-1012 or epaley@nixonpeabody.com
- Kate Ulrich Saracene at 585-263-1438 or ksaracene@nixonpeabody.com

For further discussion of these issues, please attend our webinar on February 26.