

# Labor & Employment Advisory

From the Buchanan Ingersoll & Rooney Labor and Employment Group

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## Pennsylvania's New Mini-Cobra Law Helps Additional Employees

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On June 10, 2009, Pennsylvania enacted a Mini-COBRA law. The law, which became effective on July 10, 2009, requires insurers to provide continued group medical plan coverage to certain employees (and their dependents) who work for small Pennsylvania companies that otherwise would lose their group plan coverage. As a consequence of Pennsylvania's Mini-COBRA law, eligible individuals (1) will be able to continue group plan medical benefits coverage (at their own cost) for up to nine months, and, (2) in some cases, take advantage of the 65 percent premium subsidy provisions in the American Recovery and Reinvestment Act of 2009 (ARRA), which generally apply to employees who were involuntarily terminated from employment between September 1, 2008, and December 31, 2009. Insurers must notify employers of these new provisions by August 24, 2009, and thereafter must include these provisions in all new policies and renewals.

### Eligibility

To be eligible for continued coverage under Pennsylvania's Mini-COBRA law, a person must:

- Have worked for an employer that normally employed between two and 19 employees on a typical business day during the preceding year;
- Have experienced a loss of group coverage due to a qualifying event (e.g., a termination of employment for reasons other than gross misconduct, death, divorce, Medicare eligibility, loss of dependent status, and certain situations where the employer files for bankruptcy);
- Have been covered by the employer's group health plan for the full three months prior to the qualifying event; and
- Not be covered by or eligible to be covered by another private group health insurance plan or Medicare.

### Notice Requirements

Within 30 days after a qualifying event, the employer must notify the plan administrator (if different than the employer), the employee, the employee's eligible dependents, and the group health plan insurer of the qualifying event and, in the case the employee and eligible dependents, of their right to elect continued group medical coverage. A model notice is available on the Pennsylvania Insurance Department website.

[http://www.ins.state.pa.us/ins/lib/ins/whats\\_new/policyholder\\_model\\_notice\\_final\\_070909.doc](http://www.ins.state.pa.us/ins/lib/ins/whats_new/policyholder_model_notice_final_070909.doc)

The employee and eligible dependents can elect continuation coverage by completing the notice form and returning it to the administrator (the employer or the person the employer hires to administer its health benefits) within 30 days. The administrator must notify the insurer of the election within 14 days.

If an employee or dependent elects continued coverage but later ceases to be eligible, the employee or eligible dependent must notify the administrator within 14 days.

## Terms of Continuation Coverage

Pennsylvania's Mini-COBRA law applies to a group policy that provides hospital, surgical or major medical insurance coverage but does not apply to policies that provide only dental or only vision coverage.

Eligible employees and dependents that elect continued coverage must pay for it. Except as discussed in the next section, premiums for the coverage can be up to 105 percent of the employer's group rate for the coverage.

Continued coverage under the new Pennsylvania Mini-COBRA law expires at the earliest of the following events:

- The beginning of the month for which the insured fails to timely pay a required premium;
- The date on which the employer terminates the group policy; or
- Nine months after the employee's regular coverage would have ended.

## ARRA Premium Reduction Eligibility

Pennsylvania's Mini-COBRA law was expressly designed to coordinate with the COBRA subsidy provisions under the ARRA. Under the ARRA, assistance-eligible individuals (generally individuals who experienced an involuntary termination of employment between September 1, 2008, and December 31, 2009) receive a 65 percent subsidy toward the cost of their COBRA coverage for up to nine months. The employer must pay for the subsidy but can recoup it via payroll tax credits/adjustments.

Individuals who qualify under Pennsylvania's Mini-COBRA and also qualify as assistance-eligible individuals under the ARRA will be eligible to receive the ARRA's 65 percent subsidy toward the cost of their continued coverage; however, for these individuals, the insurer (rather than the employer) must pay for the cost of the subsidy and then recoup it via payroll tax credits/adjustments.

In sum, Pennsylvania's new Mini-COBRA law extends federal COBRA-like benefits to employees and dependents of small employers that in the past would have lost their rights to group medical care coverage, and permits certain employees and dependents to take full advantage of the ARRA's 65 percent COBRA premium subsidy.

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