

**A BUSY SEASON FOR NEW LEGISLATION:
YEAR-END WRAP-UP AND GOING FORWARD**
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This year has been one of the most active for federal and state legislative activity specific to employer-sponsored benefit plans. With the flurry of laws passed in 2009, it has been a challenge keeping track of the new requirements, determining if they apply to you as an employer and an employee, what steps take in order to comply, what your insurer is requiring, and how long the new mandates will apply.

Now is a good time to look at the key changes that took place in 2009 and look ahead to 2010 and beyond.

ARRA. In 2009, perhaps the biggest challenge faced by employers subject to COBRA was the passage of the American Recovery and Reinvestment Act (ARRA) and the changes it brought to COBRA administration effective mid-March 2009.

The goal of the ARRA provision was to help subsidize COBRA continuation coverage for employees who lost their jobs during the economic recession. As with many new legislative mandates, there were some new acronyms for the Benefit and Human Resources worlds. ARRA brought with it “QB’s” who are “AEI’s.”

An AEI under ARRA is an Assistance Eligible Individual. Specifically, any employee (or spouse or dependent) who is or becomes a COBRA Qualified Beneficiary (QB) due to an employee’s “involuntary termination” between September 1, 2008 and December 31, 2009 is considered an AEI.

An AEI is eligible for the 65% COBRA premium subsidy, so would be responsible for only 35% of the COBRA premium for up to nine months from the initial COBRA eligibility date OR until the AEI is eligible for other group health plan coverage or Medicare.

The initial legislation called for the subsidy provision and eligibility guidelines to be in effect for any qualifying events that occur up to and through December 31, 2009, but it could potentially be extended.

Mini-COBRA. A similar development to ARRA was the Pennsylvania-specific law signed on June 10, 2009 by Governor Rendell which created a “Mini-COBRA” law. Similar to other mini-COBRA states such as New York, the law requires insurers to make COBRA-like continuation of health care coverage available under health plans maintained by employers normally not required to do so (fewer than 20 employees) under Federal COBRA guidelines.

Pennsylvania’s requirements apply to insured group plans (including HMO’s) maintained by employers with 2 to 19 employees. The employer’s size refers to the number of employees on a “typical business day” in the prior year.

Unlike Federal COBRA, PA mini-COBRA does not apply to dental and vision. Although qualifying events and classes of individuals who may continue coverage are the same under both, Federal COBRA considers individuals eligible if they were covered for only

one day before the Qualifying Event, while PA mini-COBRA requires three months of continuous coverage prior to the event.

The maximum duration of coverage under PA mini-COBRA is 9 months (vs. 18 under Federal COBRA) and will end if the individual is eligible for Medicare or group coverage, whether or not he or she actually enrolls.

Similar to ARRA, the 65% coverage subsidy is available for nine months for individuals who lost group health coverage as a result of an involuntary termination. Non-subsidy eligible COBRA premiums are 105% of the ordinary rate.

Dependent Coverage to Age 30. Pennsylvania enacted a law (similar to New Jersey's) requiring health insurance plans issued in the Commonwealth to make extended coverage **available** for adult dependent children of insured employees through age 29. The law applies to new contracts and renewals on or after December 15, 2009.

In order to qualify for the coverage, the adult dependent must meet following criteria:

- Under age 30
- Not married
- No dependents of his or her own
- Pennsylvania resident or enrolled as a full-time student at an institution of higher education
- Not covered or eligible for other coverage including any government program.

This new law does not apply to individual policies, long-term care, dental, or vision plans.

The decision to extend coverage is ultimately the employer's and does not preclude an increase in premiums related to covering children for these additional years. While some carriers have outlined the means of election for this option and administration, others are still finalizing their communications and internal processes.

Michelle's Law (HR 2851) extends coverage under a parent's medical plan to a dependent who suffers from a serious illness or injury which results in the dependent's taking a medically necessary leave of absence from a post-secondary institution. Coverage will continue until the earlier of:

- One year after the first date of the medically necessary leave, or
- The date coverage would otherwise terminate under the plan

Three main criteria must also be met:

- Written certification from the treating physician
- Notice regarding maintaining coverage under Michelle's Law must be provided dependents along with any notices regarding verification of student status
- Benefits must remain the same as before the medically necessary leave except where changes in coverage (such as at renewal), insurance carrier, or funding take place.

Michelle's Law is effective for plan years beginning on or after October 9, 2009.

The Americans with Disabilities Act of 1990 (ADA) was expanded in January 2009 to clarify substantial limitations, expand the concept of major life activities, and change the “regarded as” prong of the definition of disability. Employees who can effectively mitigate their impairment through corrective measures are now protected under the ADA. The revised Act also directs courts to interpret the “substantially limits” requirement in favor of broad coverage, expands the categories of major life activities, and clarifies that to qualify as a disability under the ADA, an impairment limiting one major life activity need not limit any others. Finally, the Act continues to provide protection to those discriminated against based on a perceived disability, though no accommodations are required for that employee.

The Lilly Ledbetter Fair Pay Act of 2009 amends Title VII of the Civil rights Act of 1964, the ADA, the Rehabilitation Act of 1973, and the ADEA of 1967 by restarting the statute of limitations each time an employee receives a paycheck based on a discriminatory compensation decision. In other words, each paycheck that delivers discriminatory compensation is subject to correction, regardless of when the discrimination began. This Act is retroactive to 5/27/07.

The National Defense Authorization Act (NDAA), effective 1/1/09, provides FMLA directives regarding family military provisions. Under the NDAA, employees who must fulfill military duties or must care for family members in the military are entitled to up to 12 weeks of unpaid leave for qualifying “exigencies” and up to 26 weeks of unpaid leave in a 12-month period for military caregiver leave.

The American Recovery and Reinvestment Act of 2009 (ARRA) amended Internal Revenue Code Section 132(f) by adjusting the limits an employee may receive in van pool, transit pass, and parking benefits on a tax-free basis from his or her employer under their **Public Transit Benefits**. Employers may adopt the new limits (\$120/month for aggregate van pool and transit pass benefits and \$230/month for parking benefits) by amending their plans. These limits are effective 3/1/09 through 12/31/10.

Under the **Worker, Retiree and Employer Recovery Act of 2008** (WRERA), minimum distribution requirements (RMDs) for calendar year 2009 are waived for IRAs and certain defined contribution plans, but not for defined benefit plans. WRERA also contains some technical corrections to the Pension Protection Act of 2006 that affect defined contribution plans. Amendments must be adopted on or before the last day of the plan year beginning on or after 1/1/11; for calendar year plans, the plan must be modified on or before 12/31/11.

As of 4/1/09, **The Children’s Health Insurance Program Reauthorization Act** of 2009 (CHIPRA) requires that group health plans permit eligible employees and their dependents who are eligible for coverage, but not enrolled, to enroll outside the usual enrollment period if they request coverage within 60 days. Additional annual notices will be required effective with the first plan year after the model notices are issued. In addition, the Act requires that employers notify employees annually of any premium assistance available to them under a Medicaid or SCHIP plan with respect to coverage under the employer’s group health plan.

The Genetic Information Nondiscrimination Act (GINA) bans group health plans and insurers from basing health care coverage on genetic information and from making eligibility determinations or adjusting premiums or contributions based on genetic

information. It also prohibits health plans and insurers from requesting, requiring, or purchasing the results of genetic tests and from disclosing genetic information. Further, the Act forbids employers from discriminating against workers based on genetic information. GINA-health coverage is effective for the first plan year beginning after 5/21/09 and GINA- employment discrimination is effective 11/21/09.

Effective with the first plan year after 10/3/09, the **Paul Wellstone and Peter Domenici Mental Health Parity and Addiction Equity Act** of 2008 corrects the imbalance between benefits afforded for medical/surgical treatment and treatment for mental health and substance abuse. While the Act does not require that group health plans offer mental health or substance abuse disorder benefits, it does provide that group health plans that offer such benefits must do so in parity with medical/surgical benefits. Calendar year plans must comply with the Act by 1/1/10.

Much debate and discussion continues regarding health care reform and what exactly that will mean. We will no doubt have more to digest in the coming year. As with any legislative issues, you are encouraged to contact your benefit consultant/broker and/or legal counsel for further clarification or guidance regarding the impact to your organization and how to comply.

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