

Employment Law and Litigation

March 15, 2010

Extended COBRA Coverage and Premium Subsidy for New York Employees

Qualified New York-based employees who lose their group health insurance coverage as a result of job loss will be entitled to 36 months of continued health insurance coverage and may also be eligible for a premium subsidy that requires the individual to pay only 35% of the applicable premiums for up to 15 months.

Federal COBRA coverage, which is applicable to employers with 20 or more employees, provides for 18 months of continued group health insurance coverage for employees who lose their coverage because of termination of employment. New York's "Mini-COBRA," which is applicable to New York employers with less than 20 employees, provides for 36 months of continued coverage and supplements federal COBRA coverage by providing for an additional 18 months after the federal COBRA 18-month period expires, as a result of New York's November 2009 expansion of its provisions for continuation coverage to insure that New York employees are eligible for a total of 36 months of continued coverage. The 36-month coverage period may terminate earlier if (i) the employer's group health insurance plan is terminated (and not replaced by another group plan with similar coverage); (ii) the employee becomes covered by another employer's health insurance plan; (iii) the employee fails to make a timely payment of a required premium payment; or (iv) after electing continuation coverage, the employee becomes eligible for Medicare.

Aside from the entitlement to 36 months of continued health insurance coverage, employees whose employment involuntarily terminated by March 31, 2010, may be eligible for a recently extended 15-month premium subsidy allowing the eligible individuals to pay only 35% of the regular COBRA or Mini-COBRA premium. The subsidy is available for individuals whose modified adjusted gross income is less than \$145,000 (or less than \$290,000 for a taxpayer filing a joint tax return) in the year of the subsidy. If the employee has an adjusted gross income of \$125,000 (or \$250,000 if filing jointly) in the year of the subsidy, the amount of the subsidy phases out. Tax legislation is pending that would further extend the 65% health insurance premium subsidy to employees whose employment is involuntarily terminated up to December 31, 2010. Employers (or the health insurance company) receive credit for the 65% premium subsidy that they underwrite on their tax withholding returns.

Because of the recent changes in the rules governing New York's Mini-COBRA rules and the changes relating to the federal premium subsidy provisions, employers will need to update their COBRA subsidy notices, New York State Continuation Coverage Election Notices and other required notices. New York State's insurance department websites and the Federal Department of Labor website are helpful in this regard.

If you have any questions about the extended COBRA coverage and premium subsidy, please contact your Katten attorney or either of the following attorneys:

Merril A. Mironer
212.940.8910 / merril.mironer@kattenlaw.com

Edward J. Rayner
212.940.8515 / ed.rayner@kattenlaw.com

www.kattenlaw.com

CHARLOTTE

CHICAGO

IRVING

LONDON

LOS ANGELES

NEW YORK

WASHINGTON, DC

Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.

©2010 Katten Muchin Rosenman LLP. All rights reserved.

Circular 230 Disclosure: Pursuant to regulations governing practice before the Internal Revenue Service, any tax advice contained herein is not intended or written to be used and cannot be used by a taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. Katten Muchin Rosenman LLP is an Illinois limited liability partnership including professional corporations that has elected to be governed by the Illinois Uniform Partnership Act (1997). London affiliate: Katten Muchin Rosenman Cornish LLP.