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PENNSYLVANIA'S MINI-COBRA STATUTE

By Gerri L. Sperling, Esquire

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What is Mini-COBRA? On June 10, 2009, Pennsylvania Governor Edward G. Rendell signed Act 2 of 2009 which amends the Pennsylvania Insurance Law to require small employers (employers who employ at least two but less than twenty employees) to offer continuation health coverage for individuals who lose their group health coverage due to certain qualifying events, including termination of employment. This statute, known as "Mini-COBRA", became effective on July 10, 2009. Prior to July 10, 2009, only employees of employers who employ twenty or more employees were entitled, under federal law, to COBRA continuation coverage. Now, under Mini-COBRA, employees of small employers based in Pennsylvania who lose their group health coverage on and after July 10, 2009 are entitled to up to nine months of continued health group health coverage ("Mini-COBRA coverage"). Mini-COBRA coverage is to be the same as the coverage in effect at the time of the qualifying event, as defined below, or any replacement coverage.

Who is eligible for Mini-COBRA? Employees who are covered under group health insurance coverage through small employers, and their dependents, are eligible for Mini-COBRA if they lose their coverage as a result of a qualifying event. However, to be eligible, covered employees and eligible dependents must have been continuously insured under a group insurance policy for at least three consecutive months prior to the qualifying event. Also, the following individuals are not entitled to Mini-COBRA coverage: (i) a person who is covered or eligible for coverage under the federal Medicare program; (ii) a person who fails to verify that he or she is ineligible for other employer-based group coverage as an eligible dependent (for example, coverage offered by a spouse's employer); (iii) a person who is or could be covered by any other group health coverage (excluding Medical Assistance and CHIP). Thus, Mini-COBRA is really meant to be a last resort for individuals who do not have access to other health coverage.

What is a qualifying event? A qualifying event is an occurrence that would result in the loss of health coverage for the covered employee or eligible dependent, including the following: (i) termination of employment (either voluntarily or involuntarily, so long as the termination is not due to gross misconduct); (ii) death of the covered employee; (iii) reduction in hours of the employee which renders him or her ineligible to participate in the group health coverage; (iv) divorce or legal separation; (v) a dependent child becomes ineligible to participate in the group coverage because he or she no longer meet the criteria for dependent coverage. Even if the qualifying event (for example, termination of employment) occurs before the effective date of Mini-COBRA

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(July 10, 2009), if the employee or dependent does not lose group health coverage until on or after July 10, 2009, the employee or dependent is entitled to Mini-COBRA continuation coverage.

What does Mini-COBRA cost? Who bears that cost? Unlike the federal COBRA, which permits an employer to charge up to 102% of the premium rate for the employee and/or dependent(s), under Mini-COBRA, the insurance company which provides the coverage may charge up to 105% of the premium rate. However, if the employee qualifies for the COBRA subsidy, discussed below, the insurance company may charge the employee only 35% of the Mini-COBRA premium and will subsidize the remaining 65% of the premium. The small employer does not bear any of this expense.

When does the COBRA subsidy apply? Even if an employee does not qualify for federal COBRA because he or she was employed by a small employer, if that employee becomes eligible for Mini-COBRA under Pennsylvania law due to an involuntary termination of employment (for a reason other than gross misconduct) on or after July 10, 2009, that employee may be entitled to the COBRA subsidy provided by federal law. If so, the employee will be required to pay only 35% of the Mini-COBRA premium. This subsidy will remain in effect for the nine months of Mini-COBRA continuation coverage so long as the employee does not otherwise lose eligibility for the coverage. Most importantly to a small employer, unlike the federal COBRA, the employer does not have to pay the subsidized amount of the Mini-COBRA premium. Rather, under Pennsylvania law, the company that provides health coverage for the employer will provide the 65% subsidy. Employees are not eligible for the subsidy if they expect to earn in excess of \$125,000 or \$250,000 for a married couple filing jointly.

What are the notice and time requirements for Mini-COBRA? The Mini-COBRA statute requires insurance companies to notify employers by August 24, 2009 of the new requirements. However, even prior to this date, an employer must provide notice to the plan administrator, the insurance company, and the covered employee of the qualifying event within thirty days of its occurrence. The employee or covered dependent then has thirty days of his or her receipt of notice to elect to receive the Mini-COBRA coverage. If an employee or dependent elects Mini-COBRA coverage, the coverage will apply retroactively to the date that the prior group coverage ended so that there will be no break in coverage.

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When does Mini-COBRA coverage end? As noted above, Mini-COBRA coverage extends for nine months from the last date of coverage under the employer's group health plan. However, prior to the expiration of the nine-month Mini-COBRA coverage period, Mini-COBRA coverage will end: (i) if the recipient becomes eligible for Medicare; (ii) if the recipient becomes eligible for other employer-based coverage; (iii) if the recipient fails to pay the premiums to the insurance company on a timely basis; or (iv) if the employer's group coverage is terminated.

Conclusion. Mini-COBRA imposes new notice and reporting requirements on employers who employ at least two but less than twenty employees. Although small employers do not subsidize Mini-COBRA, they must be cognizant of these new requirements and provide the requisite notices to eligible employees and dependents, as well as to their group health carrier, within thirty days of the qualifying event.

Please call the attorneys of Metz Lewis' Employment and Labor Group at 412-918-1100 if you have any questions regarding this article or any other matter.

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