



MASSACHUSETTS FINALLY AUTHORIZES SECOND CHANCE ELECTIONS FOR MINI-COBRA

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BACKGROUND

The American Recovery and Reinvestment Act of 2009 ("ARRA") was enacted on February 17, 2009 and gave a nine month 65% federal subsidy to involuntarily terminated employees, their COBRA beneficiaries at the time of the termination, and children born or adopted after that date. In COBRA-speak, these are assistance eligible individuals ("AEIs"). The 65% ARRA subsidy even covered AEIs of businesses that are too small (less than 20 employees) to be covered by federal COBRA, provided the employer was in a state like MA which has a "mini-COBRA" statute that is similar to COBRA.

ARRA also gave "second chance" enrollment rights to AEIs if involuntary termination occurred during the period September 1, 2008 through February 16, 2009, and if these persons either had not elected COBRA or had dropped COBRA. The federal second chance election would allow coverage to start on the first coverage period on or after February 17, 2009, which usually meant March 1, 2009.

ARRA made it optional with the states to provide these "second chance" enrollment rights in their mini-COBRA statutes. Our neighbors (NY, RI, CT, and NH) did that right away, either with legislative action or fiat from the state insurance commissioner. MA lagged, leaving many persons, who were terminated involuntarily and who had dropped or declined COBRA, without "second chance" enrollment rights.

[Section 41 of Senate Bill No 2101](#), enacted on July 2, 2009, finally adds "second chance" rights to MGL Ch. 176J, Section 9, the [Massachusetts mini-COBRA statute](#).

THE DETAILS

A second chance mini-COBRA enrollment in MA will be effective as of August 1, 2009 (or, if earlier, the first billing cycle starting on or after July 2, but August 1 is the date for most small groups). It can last for the duration of the 18 month period that would have applied if mini-COBRA had been elected at the time of the involuntary termination. Notification of this new right is required within 60 days of the new MA law's enactment on July 2, 2009. Small employers should coordinate with their insurers immediately to determine whether the carrier

will send the notice or whether the employer is stuck with that chore.

Provided that the employer properly identifies the AEIs, its duties will be the same as for other mini-COBRA terminations, where it functions as the carrier's delegate. It will collect the signed election forms for the carrier; it will also collect the COBRA premium and forward it to the carrier. (In some states, insurance companies do more of the work, but MA carriers are permitted to delegate under our mini-COBRA statute.) Because this is all new, small MA employers should check with their carrier to be clear about who does what, just in case the carrier decides to assume more of the burden for this new law.

If the AEI is eligible for the 65% federal COBRA subsidy, the small employer that collects the 35% does not have to advance the remaining 65% to the carrier, as is the case with federal COBRA. Instead, the carrier is expected to cover the 65%, and it will then file for reimbursement with the US Treasury.

Finally, if the AEI does not have rights to the 65% subsidy (because of eligibility for other group insurance), he or she may still elect full-priced "second chance" coverage, provided there is no other coverage actually in existence.

THE FULL TEXT OF SECTION 41:

SECTION 41. Notwithstanding any general or special law to the contrary, a carrier offering continuation coverage under a health benefit plan issued pursuant to chapter 176J of the General Laws to a qualified beneficiary eligible for the COBRA premium assistance benefit set forth in section 3001 of the American Recovery and Reinvestment Act of 2009 shall offer the extended election period available therein to each qualified beneficiary who does not have an election of continuation coverage under a health benefit plan issued under said chapter 176J on the effective date of this act, but who would be an assistance-eligible individual under the American Recovery and Reinvestment Act if such election were in effect. Any such qualified beneficiary may elect such continuation coverage under said chapter 176J during the period beginning on the effective date of this act and ending 60 days after the date on which the notification required under this section is provided to such qualified beneficiary. Coverage elected in this extended election period shall commence with the first period of coverage beginning on or after the effective date of this act. For the purposes of this section, carriers or their designees shall comply with paragraph (5) of subsection (j) of section 9 of said chapter 176J and any applicable notice requirements under American Recovery and Retirement act of 2009, except that such notice shall be made within 60 days after the effective date of this act.

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