

..... March 2009 .....

## Future of Benefits

### Budget, Stimulus Could Radically Alter Course of Employee Benefits

**E**mployers continue to scramble to prepare for new COBRA rules that were passed with the latest economic stimulus bill, and they're bracing for even more benefits changes that might be included in the proposed federal budget.

The American Recovery and Reinvestment Act of 2009 (ARRA), passed last month, provides a 65 percent federal subsidy for nine months for workers who elect to take COBRA following an involuntary termination. However, the bill requires employers to pay the 65 percent directly to the insurance companies and then apply to be reimbursed through their payroll taxes.

"It's a significant amount of out-of-pocket expense," said Rebecca Hudson, an employment attorney for Holland and Hart. "[Employers] have to outlay that cost immediately, then wait to deduct it from payroll taxes."

These COBRA changes are retroactive to terminations effective Sept. 1, 2008, which means some workers who originally turned down COBRA benefits will get a second chance, Hudson said.

The new rules went into effect on March 1, but the Department of Labor (DOL) has yet to release model notices, leaving some employers scratching their heads about how to proceed.

"Because the model notices haven't been issued yet, COBRA participants for March and April . . . should plan on

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## 401(k)s and Retirement

### IRS, Court Clarify Some Compliance Questions

Final IRS rules and a recent court decision likely will clear up some employers' retirement compliance questions, but final 401(k) disclosure regulations remain in limbo.

The IRS has published final rules on automatic contributions that clarify how to handle automatic-contribution arrangements for rehired workers.

The IRS rules state that when employees who have been terminated for one year or more are rehired, the plan sponsor can automatically enroll the worker in the plan at the minimum deferral percentage rather than the deferral percentage rate prior to termination.

The rules previously required that employees receive notice of their automatic enrollment in the plan at least 30 days prior to eligibility

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## Health Benefit Costs

### Employers expect 6% Increase in 2009 Plan Costs

Most employers say they are committed to making significant investments to improve their workers' health this year despite an expected increase in health plan costs in 2009, according to a pair of surveys.

A preliminary report by Watson Wyatt and the National Business Group on Health (NBGH) found that large U.S. employers expect the cost of health benefits to rise 6 percent in 2009 - the same rate of increase as 2007 and 2008.

Rising costs and a battered economy hasn't yet deterred companies from keeping health care benefits a top priority. According to a recent survey by Hewitt Associates, nearly two-thirds of employers (65 percent) said they are continuing to make significant investments to improving their workers' health and productivity. However, the number of companies that have shifted their focus to solely mitigating health care costs has risen this year to 31 percent from 15 percent in 2008. Also, nearly one-fifth (19 percent) of those surveyed said they expected to move away from directly providing health care benefits to employees over the next three to five years - a sharp jump from 4 percent in 2008.

The Watson Wyatt-NBGH survey echoed that trepidation, finding that only 62 percent of employers this year are very confident they will be able to provide health benefits 10 years from now. In 2008, 73 percent thought they would still be providing benefits in a decade. ■



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paying 100 percent of their premium to their COBRA administrators or to their former employers," said Bob Meyers, president and CEO of CobraGuard, in a recent webinar.

How and when participants would get reimbursed remains up in the air, and even eligibility is unclear.

The ARRA doesn't clearly define "involuntary termination," and that omission could cause lots of legal headaches down the road.

"Somebody may have resigned on paper, but (the law) does not make it clear whether terminations in anticipation of a layoff, constructive terminations or (forced) early retirements are covered," said John Grady of Grady & Associates in Las Vegas.

Meyers suggests that employers start compiling a list of all terminated workers and their beneficiaries, just in case.

The COBRA changes appear to be the first rumblings of a reform avalanche that HR departments likely will face this year. The next volley comes in the form of the federal budget, proposed by President Barack Obama in February. Folded into that proposal are several provisions that will affect employee benefits and HR practices.

The most significant of these provisions would require employees who offer defined contribution plans to also offer automatic enrollment and would require companies that do not offer retirement plans to enroll their employees in a direct-deposit IRA.

"Employers will be concerned that this is the first mandate in what has been a voluntary system," said Jan Jacobson, senior counsel with the American Benefits Council. ■

## 401(k)s and Retirement

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and annually thereafter. This caused a problem for plans that allowed participants to join the plan immediately after being hired. The IRS now gives plan sponsors some wiggle room if the notice is supplied "as soon as practicable."

Another 401(k) compliance question was resolved in a recent federal appeals court ruling. In the first decision of its kind, the 7<sup>th</sup> U.S. Circuit Court of Appeals ruled that employers do not have a fiduciary duty to find the plan with the lowest fees.

The court decision likely deals a blow to at least 20 similar excessive-fee cases around the country and is a setback for the Department of Labor (DOL), which has been pushing employers to find the lowest-cost investment funds for employees.

While the court ruling clears up some uncertainty regarding plan costs, the troubling issue of fee disclosure requirements still lingers.

In 2007, the DOL created new rules for defined contribution plans that required plan sponsors to provide the department with annual fee-and-compensation information (such as revenue-sharing agreements) in their Form 5500 financial reports starting in 2009. However, no legal requirement exists that would force service providers to give that information to the plan sponsors.

The DOL proposed a new rule requiring service providers to hand over that information but failed to gain approval before President Barack Obama took office. Because Obama's DOL team is still being assembled, that proposal's future is now uncertain. ■

## ..... Bulletin Briefs .....

- ◆ **IT'S ALL ABOUT TRUST:** A report by the Pharmacy Benefit Management Institute found that financial transparency is the top determinant in employer satisfaction with their PBM relationship. This is the third year that transparency has topped the survey's list.
- ◆ **GENETIC RULE:** Employers would be prohibited from hiring or firing workers on the basis of the employee's genetic predisposition to a disease or from deliberately obtaining genetic information under rules proposed by the Equal Employment Opportunity Commission. The proposal, which is open to public comment over the next two months, would apply to public and private employers with at least 15 employees.
- ◆ **NEW TAX TABLES:** The IRS has issued new withholding tables that reflect a new tax credit created by the recent federal economic stimulus package. The credit equals 6.2 percent of a taxpayer's earned income up to a total credit of \$400 for individuals and \$800 for joint filers. Go to <http://www.irs.gov/pub/irs-pdf/n1036.pdf>.



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