

## **LABOR AND EMPLOYMENT LAW ALERT**

### **February 20, 2009**

#### **Federal economic stimulus package requires employers to subsidize COBRA premium to involuntary terminated employees, and expands HIPAA privacy and security obligations**

On February 17, 2009, the American Recovery and Reinvestment Act of 2009 (“ARRA”) was enacted, amending the Consolidated Omnibus Budget Reconciliation Act (“COBRA”) to provide for COBRA premium assistance for “assistance eligible individuals” (“AEIs”). The assistance is available for periods of coverage beginning on or after February 17, 2009 for up to nine months of the AEI’s maximum coverage period. An AEI is a qualified beneficiary (1) who at any time during the period that begins September 1, 2008, and ends December 31, 2009, is eligible for COBRA; (2) elects COBRA coverage (when first offered after February 17, 2009, or during ARRA’s special election period), and (3) has a qualifying event for COBRA coverage that is the employee’s involuntary termination during the period beginning September 1, 2008 and ending December 31, 2009. The AEI pays 35% of the COBRA premium and the employer is responsible for paying the remaining 65% of the premium cost. Upon AEI’s premium payment, the employer may request to be reimbursed by the federal government for the subsidy it paid, through a credit against the employer’s wage withholdings and payroll taxes.

ARRA allows that the premium assistance also be offered to AEIs whose employment was terminated on or after September 1, 2008, if such AEIs did not have a COBRA election in effect on February 17, 2009, through a second election period. This election period begins on February 17, 2009, and ends 60 days after the date on which notification is provided to the AEI. The coverage will not be retroactive, will begin with the first period of coverage after February 17, 2009, and will not extend beyond the maximum period of coverage that would have been required if COBRA had been elected during the first election period.

The new statute requires that the COBRA election notice for all individuals who become entitled to elect COBRA pursuant to ARRA must include additional notification of the availability of the premium assistance, among other rights and duties established for the AEIs. Also, the plan administrator must provide a notice of the assistance and the second election period to elect COBRA to AEIs discharged on or after September 1, 2008 who did not have a COBRA election in effect on February 17, 2009.

ARRA also broadens the Health Insurance Portability and Accountability Act’s privacy and security rules to extend certain privacy and security obligations directly to business associates. In addition, ARRA establishes additional disclosure requirements regarding electronic health records, enacts new notification requirements upon a breach of unsecured protected health information and strengthens enforcement and penalties associated with violations of the privacy and security provisions.

Sandra Negrón will be heading the team of attorneys who will be assisting our clients with any consultations regarding this matter. Feel free to contact her directly at (787)250-2638 or by email at [sln@mcvpr.com](mailto:sln@mcvpr.com). If you need information regarding other Labor & Employment Law matters please contact any of the attorneys listed below:

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