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IRS Defines “Involuntary Termination” Required for COBRA Subsidies

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The most frequent question about the payment of COBRA premiums under the American Recovery and Reinvestment Act has been the definition of the subsidy’s eligibility requirement that a person be “involuntarily terminated.” In IRS Notice 2009-27, issued March 31, 2009, the Internal Revenue Service has now specified the criteria for satisfying this requirement. Q&A-1 through Q&A-9 of that publication explain:

The criterion is termination of employment, not termination of health plan coverage, so classic COBRA qualifying events unrelated to employment, such as divorce, do not constitute eligibility for the premium subsidy regardless of whether COBRA continuation rights may be incurred.

The “termination” must be “severance from employment due to the independent exercise of the unilateral authority of the employer other than due to the employee’s implicit or explicit request, where the employee was willing and able to continue performing services.” This can include nonrenewal of a contract and “termination for a good reason due to employer action that causes a material negative change in the employment relationship with the employee.”

Examples of involuntary termination supporting the subsidy include:

1. layoff or temporary furlough resulting in loss of coverage,
2. employer nonrenewal of an employment contract,

3. involuntary job loss due to absence caused by illness or disability,
4. retirement in the face of probable termination,
5. termination for a disciplinary reason less severe than gross misconduct,
6. resignation due to material change in geographic location or some other requirement of the position (much like a constructive discharge in the unemployment compensation context),
7. an employer lockout (but not a strike) or,
8. employee acceptance of a severance package (a buy-out) as an alternative to potential termination.

However, a reduction in hours, which causes loss of coverage but does not fully terminate the employee, does not support the subsidy.

The full IRS Notice can be found at www.irs.gov, Notice 2009-27.

As these interpretive notices become more frequent, detailed, and wide-ranging, a need for a systematic review of the COBRA subsidy rules is in order. Lindner & Marsack, S.C. will be presenting a free webinar for its clients and friends shortly, to which all recipients of these E-Alerts will be invited. Until then, please address any of your COBRA questions to Alan Levy, who can be reached at alevy@lindner-marsack.com.