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ARIZONA ADOPTS MINI COBRA LAW

Beginning January 1, 2019, A.R.S. § 20-2330 (Arizona mini COBRA) requires Arizona employers with twenty (20) or fewer employees to offer enrollees and qualified dependents the opportunity to continue coverage under an employer's plan when there is a loss of coverage due to a qualifying event.

Background

Federal COBRA generally requires employers with twenty (20) or more employees to offer an employee, an employee's spouse, and any dependents of the employee a period of continued healthcare coverage from an employer's plan. Previously, Arizona employers were not required to offer enrollees and qualified dependents COBRA coverage if an employer had fewer than twenty (20) employees.

Covered Employers Under Arizona Mini COBRA

Under the Arizona mini COBRA law, an employer is now required to offer an enrollee and qualified dependents COBRA coverage if an employer averaged between one (1) and twenty (20) covered employees in the preceding calendar year. This law applies to any health benefit plan issued or renewed on or after January 1, 2019.

Definition of Enrollee/Qualified Dependent

Enrollees and their qualified dependents are entitled to Arizona mini COBRA coverage from a covered employer. An enrollee means an employee who is covered under the employer's health benefit plan for at least three (3) months before a qualifying event that causes a loss of coverage. A qualified dependent is means the spouse or dependent child of an enrollee who is covered under the enrollee's health benefit plan immediately before a qualifying event that causes a loss of coverage.

Coverage period

Arizona's mini COBRA law requires a covered employer to offer an enrollee or qualified dependent up to eighteen (18) months of continuation coverage. If a qualified dependent becomes disabled within the first eighteen (18) months of continuation coverage, they shall be offered an eleven (11) month extension, for a total coverage period of twenty-nine (29) months.

ARIZONA ADOPTS MINI COBRA LAW (CONTINUED)

Notice

Employers are responsible for notifying enrollees/qualified dependents within forty-four (44) days of the qualifying event of their right to continue group health coverage if they lose coverage due to any of the following "qualifying events":

- Voluntary or involuntary termination of employment for a reason other than gross misconduct
- Reduction of work hours
- Divorce or separation
- Death of the employee
- Employee becomes entitled to Medicare
- Loss of dependent status under the group plan; and
- Loss of coverage of a retired enrollee (or the spouse or dependent child of a retiree who loses coverage) within one year before or after commencement of a bankruptcy proceeding by the employer

In the future, the Arizona Department of Insurance will prepare a model notice that will be available on the Department's website to assist covered employers in notifying and educating enrollees (and any qualified dependents) of the Arizona mini COBRA law.

Premiums

Each enrollee and/or qualified dependent will have an independent right to elect Arizona mini COBRA. The enrollee or qualified dependent must elect continuation coverage within sixty (60) days of the date of the employer's notice. Within forty-five (45) days of electing continuation coverage, the enrollee or qualified dependent must submit the first premium payment and a five (5) percent administrative fee to the health plan.

Penalties

Unlike Federal COBRA, the Arizona mini COBRA law does not explicitly list penalties for failing to offer Arizona mini COBRA coverage. Additional guidance from the Arizona Department of Insurance may be forthcoming. However, we would advise Arizona employers with twenty (20) or fewer employees to comply with the law's requirements to avoid any potential penalties.

Action Required

Arizona employers with twenty (20) or fewer employees should review the Arizona mini COBRA requirements and make sure they are in compliance.

For the text of the statute, see:

https://www.azleg.gov/ars/20/02330.htm

PENALTIES INCREASE FOR ERISA VIOLATIONS

The Department of Labor (DOL) recently published its interim final rule which increases penalties for ERISA violations. The increase will apply to penalties assessed after January 23, 2019.

Violation	Rate for Penalties Assessed After January 2, 2018 and before January 23, 2019	Increased Rate for Penalties Assessed After January 23, 2019
Failure to furnish reports (i.e., statement of benefits) to former retirement plan participants and beneficiaries or failure to maintain records for a retirement plan.	$29/employee	$30/employee
Failure or refusal to file annual report (Form 5500).	$2,140/day per plan	$2,194/day per plan
Failure of Multiple Employer Welfare Arrangement (MEWA) to file required report (M-1).	$1,558/day	$1,597/day
Failure to furnish employee benefit plan documents to DOL upon request (including plan and trust documents and summary plan description).	$152/day (but no greater than $1,527 per request)	$156/day (but no greater than $1,566 per request)
Failure by employer to inform employees of Medicaid/CHIP coverage opportunities.	$114/day/employee	$117/day/employee
Failure of group health plan's plan administrator to provide state with timely coverage coordination disclosure form from Medicaid/CHIP eligible individuals.	$114/day/participant or beneficiary	$117/day/participant or beneficiary
Genetic Information Nondisclosure Act (GINA) violation by group health plan sponsor/health insurance issuer.	$114/day/participant or beneficiary (if not corrected before notice of violation is received – subject to minimum of $2,847/day/participant or beneficiary for *de minimis* violations or $17,084/day/ participant or beneficiary for violations that are not *de minimis*; maximum of $569,468 for unintentional failures)	$117/day/participant or beneficiary (if not corrected before notice of violation is received – subject to minimum of $2,919/day/participant or beneficiary for *de minimis* violations or $17,515/day/ participant or beneficiary for violations that are not *de minimis*; maximum of $583,830 for unintentional failures)
Failure to provide Summary of Benefits Coverage to participant or beneficiary of group health plan.	$1,128/failure	$1,156/failure

No Action Required

Employers should be aware of the increases in penalty amounts that they could be exposed to for ERISA violations.

For the DOL interim final rule, see: https://www.govinfo.gov/content/pkg/FR-2019-01-23/pdf/2019-00089.pdf

QUESTION OF THE MONTH

Must Applicable Large Employers File ACA Information Returns Electronically?

QUESTION: We added a large number of full-time employees in 2017 and became an applicable large employer (ALE) in 2018. We are getting ready to file Forms 1094-C and 1095-C with the IRS. Do we have to file the forms electronically?

ANSWER: The filing method depends on the size of the ALE. As background, the Affordable Care (ACA) enacted Code § 4980H, which imposes employer shared responsibility penalties on ALEs that fail to offer full-time employees adequate employer-sponsored health coverage. There are two types of penalties: Under Code § 4980H(a), an ALE may be subject to a monthly penalty for failure to offer substantially all (generally, at least 95%) of its full-time employees and their dependents the opportunity to enroll in eligible employer-sponsored group health coverage. Under Code § 4980H(b), an ALE may be subject to a monthly penalty if it offers coverage to the required number of full-time employees (and their dependents), but the coverage offered to full-time employees does not provide "minimum value" or is not "affordable."

Form 1094-C generally indicates whether the ALE offered coverage to enough employees to avoid Code § 4980H(a) penalties. Form 1095-C generally indicates whether the ALE offered affordable, minimum value coverage to each full-time employee. Both forms are filed with the IRS; Form 1095-C is also furnished to employees. Electronic filing with the IRS is required for ALE members who file at least 250 Forms 1095-C for a tax year. Only Forms 1095-C are counted in determining whether the ALE member reaches the 250-return threshold. Form 1094-C is not treated as a separate return but must be filed electronically when the Form 1095-C must be filed electronically. ALE members filing fewer than 250 Forms 1095-C may file either on paper or electronically; the IRS encourages electronic filing.

In May 2018, the IRS issued proposed regulations that would have aggregated all information returns that the ALE member was required to file (including, for example, Forms W-2) to determine whether the ALE member reached the 250-return threshold. Although the proposed regulations were intended to become effective for returns filed after December 31, 2018, the instructions for Forms 1094-C and 1095-C indicate that aggregation will not apply to 2018 forms filed with the IRS in 2019.

Regardless of the filing method with the IRS, ALEs must furnish Form 1095-C to each employee on paper, unless the employee affirmatively consents to electronic distribution. The consent must be specific to Form 1095-C, with clear and conspicuous disclosure of information required by IRS regulations.

Source: EBIA

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