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March 23, 2020

Coronavirus - Information for Connecticut Employers

COBRA

Employers dealing with the economic fallout of the coronavirus are weighing layoffs, furloughs, shut-downs and reduced schedules. Events are moving rapidly and legislation is being considered by Congress, but for the present, employers need to be aware of their obligations under COBRA, as well as their contracts with the health insurance company.

Employer Sponsored Health Insurance

Generally, the contract between an employer and a health insurer, by which the employees are covered, has minimum hours for employee eligibility. Usually, the contract limits health insurance to employees who work a minimum of 32 or 35 hours per week.

If an employee's hours are reduced below that number, the employee is no longer eligible for health insurance.

That is a factor that should be considered in addressing the decisions on staffing – at least right now.

COBRA

If an employee loses coverage because of reduced hours, a layoff, a furlough, or a shut-down, the employee has a right to continue coverage pursuant to COBRA (Consolidated Omnibus Budget Reconciliation Act), which provides for continued coverage for 18 months. But, the employer is not obligated to pay for COBRA. Rather, an employee electing COBRA pays 102% of the health insurance. That includes both the employer part and the employee part of the health insurance. Most employees cannot afford continued coverage and do not exercise their COBRA rights.

Hopefully, Congress will address this. But until they do, employers need to be aware of their obligations.

An employee, who is a participant in an employer sponsored health insurance plan, is entitled to notice of termination of his/her eligibility in that plan, as are the beneficiaries (employee's spouse and dependents). 29 U.S.C. § 1166. The notice must include the employee's rights to elect continued coverage pursuant to COBRA.

As a practical matter, this means that an employee and his dependents are entitled to notice of eligibility of continued coverage, if the employee loses coverage because of reduced hours or layoff.

According to the terms of the statute, "the employer of an employee under a plan must notify the administrator of a (termination or layoff) . . . within 30 days . . . of the qualifying event." 29 U.S.C. § 1166(a)(2).

Thus, the company is required to notify the “administrator” within 30 days of the qualifying event or in this case within 30 days of reduced hours or the layoff. The “administrator” in most cases is the health insurance company. The “administrator” must notify the employees of their right to continue coverage pursuant to COBRA within 14 days of being notified by the employer. 29 U.S.C. § 1166(c).

The penalties for failing to notify the employee of his or her rights can be stiff. It is \$100 a day for each employee or \$200 per day if the employee had dependents on the plan. In addition, the failure to notify the employee can result in liability for any medical expenses, as well as attorney fees incurred as a result of the failure.

If you have any questions about this or any other employment issue, please feel free to contact **Bernard E. Jacques** at bjacques@mdmc-law.com.

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