

HR BULLETIN

JANUARY, 2009

SUSPENSION OF MINIMUM REQUIRED DISTRIBUTIONS FOR 2009

On December 23, 2008, former President George Bush signed into law the Worker, Retiree, and Employer Recovery Act of 2008 (the "Act"). The Act includes a one-year waiver of the minimum distributions required to be made by defined contribution plans (generally including 401(k), 403(a) and 403(b) plans and 457(b) plans sponsored by governmental employers) and IRAs. This waiver is designed to limit the impact of decreases in financial markets on plan participants and IRA holders by allowing individuals to avoid distributions from retirement accounts that have dramatically reduced in value over the last year.

This waiver is available only for distributions for calendar year 2009. All of these distributions, without the waiver, would have been based on account balances at the end of 2008. Therefore, the waiver will apply to distributions otherwise due in 2009 and to those otherwise due on or before April 1, 2010 with respect to individuals who attain the age of 70 ½ in 2009. **NOTE: Distributions due on or before April 1, 2009 with respect to individuals who attained the age of 70 ½ in 2008 are not covered by the Act and still must be paid.**

While the required distributions otherwise due for the 2009 calendar year are waived under the Act, plan provisions may require that these distributions still be paid. Therefore, plan sponsors may want to amend their plans so that these distributions are not paid. The Act specifies that it is permissible for a plan not to pay distributions that the plan document otherwise requires to be paid as required minimum distributions for the 2009 calendar year so long as the plan is amended to conform to its operation (of not paying the distributions) no later than the last day of the plan year commencing on or after January 1, 2011.

If a plan proceeds to make the distributions for 2009, despite the waiver provided by the Act, the distributions will be eligible for rollover to an IRA, in accordance with generally applicable rollover rules. For administrative simplicity, however, the plan does not have to give the participant the right to make a direct rollover of the distribution, does not have to provide a rollover notice and does not have to withhold 20% of any such distribution that is not directly rolled over.

COBRA EXTENSION PART OF HOUSE ECONOMIC STIMULUS PACKAGE

On Thursday, January 15, 2009, the U.S. House of Representatives unveiled the initial version of its economic stimulus package. This package includes a significant extension of COBRA health care continuation rights for unemployed persons. First, the package would provide temporary government subsidies for health insurance coverage to those persons who have been involuntarily terminated between September 1, 2008 and December 31, 2009. Under this proposal, the federal government would subsidize 65% of the COBRA health care continuation premiums for one year for eligible beneficiaries and the eligible persons would be obligated to pay only 35% of the COBRA premium. The subsidy would be delivered through credits against employer payroll tax obligations.

Second, the House bill would extend the availability of COBRA coverage for certain unemployed persons beyond the time periods provided currently (generally, 18 months). Under this proposal, unemployed persons who are either (a) age 55 and older at employment termination or (b) have worked for an employer for 10 or more years at employment termination may retain their COBRA coverage until they either become Medicare-eligible or are covered under a plan provided by a subsequent employer.

These provisions, if enacted, seem likely to increase the number of persons electing COBRA continuation coverage, and also would be expected to increase the period of time for which continuation coverage is extended. Accordingly, it is reasonable to expect that employer health care costs would rise if these provisions are enacted by Congress. Some commentators believe this resulting increase in cost could induce more employers to reduce or eliminate health care coverage.

On Thursday, January 22, these COBRA provisions were approved by the House Ways and Means Committee, which approved the tax portions of the larger \$825 billion economic stimulus package. The tax portions were approved on a partisan 24-13 vote. House leaders indicate that the full House will consider the economic stimulus package next week. Sen. Max Baucus, Chairman of the Senate Committee on Finance, issued a news release on January 23 summarizing the Senate version of the economic stimulus package. The Senate bill also contains a 65% subsidy feature similar to the House proposal (for only 9 months), but the extended coverage provisions are not included in the Senate version. The Committee on Finance is expected to consider the proposals next week.

CONGRESS MOVES ON EQUAL PAY

On Thursday, January 22, the Senate passed the Lily Ledbetter Fair Pay Act of 2009 (the "Ledbetter Bill"). Earlier in January, the House passed a different version of the Ledbetter Bill. The Ledbetter Bill primarily is designed to revise the time limits that apply to wage discrimination claims, and would overturn a 2007 U.S. Supreme Court decision, *Ledbetter vs. Goodyear Tire & Rubber Co.*, which took a restrictive position on the statute of limitations for filing such claims. The two houses of Congress now must reconcile differences in the two versions of the Ledbetter Bill before sending it to President Barack Obama for his signature. President Obama has indicated that he will sign the legislation.

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