



February 2009

New COBRA Provisions under the American Recovery and Reinvestment Act of 2009.

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA). While most of the provisions of this act deal with infrastructure spending, tax reductions and other measures to aid economic recovery, the act also provides additional assistance to workers who have lost their jobs due to the economic slowdown.

Of particular note to employers are provisions within the act that provide government subsidies for COBRA premiums.

The subsidies available under the ARRA are available to former employees (and other qualified beneficiaries associated with the former employee) who lose their jobs on an involuntary basis between September 1, 2008 and December 31, 2009 due to the economic slowdown.

The amount of the subsidy available to eligible Qualified Beneficiaries is equivalent to 65% of the COBRA premium. The subsidy, although provided by the government, is credited to the former employee prospectively by the employer. Employers may therefore only collect 35% of the eligible COBRA premium from the qualified beneficiaries and then take a credit of the eligible premium amounts against Federal payroll tax filings.

Subsidies under this program are limited to a 9 month period. This, however, does not otherwise limit the normal maximum period of COBRA continuation available to any particular beneficiary. Furthermore, although a new COBRA election period is made available under the act, the maximum period of continuation is not extended.

For example, an employee who was laid off in September of 2008 would be eligible for the subsidy starting in March of 2009 (the first month following the date the law went into effect). They may then choose to elect COBRA and receive the remainder of the 18 months of continuation that would have begun had they elected COBRA during the initial 60 day election period that began in September of 2008. Premiums for the first 9 months of continuation beginning in March of 2009 would be subsidized but premiums for the remaining few months of coverage would not be subsidized. Continuation coverage under this example will still be exhausted 18 months after the original loss of coverage, either March or April of 2010, depending upon the original notification dates and the contract provisions.

The DOL is required to provide a model notice for employers to utilize to make individuals eligible for assistance aware of the new election period and reduced premiums available under the act. It will most likely be several weeks before the notice is available.

The Focus

Robertson Sanitation to pay \$475,000 in EEOC Lawsuit Charging it failed to Hire Female Drivers

Robertson Sanitation, a Phoenix-based trash hauling, recycling and disposal company that operates in Georgia, will pay \$475,000 to settle a sex discrimination lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced recently.

According to the EEOC's suit, Jeanine Moore applied for a truck driver position with Robertson at its Winder, Ga., facility in August 2005. Although she was more qualified than a number of male applicants who were hired, Moore was never interviewed and never received an offer. The EEOC said that the job applications for the Winder location between January 2005 and September 2006 shows that some of the men hired were less qualified than Moore, including six males who the agency claims lacked Robertson's minimum qualifications for the truck driver position. Investigation of Moore's allegations revealed a class of similarly qualified women who, like Moore, were also rejected despite their qualifications. The EEOC said the employer subjected female applicants to discriminatory hiring practices at the Winder facility as well as the Austell, Ga., facility.

The consent decree settling the suit provides for \$475,000 in monetary relief to the class of qualified female applicants who were discriminatorily rejected for employment between January 1, 2005 and October 31, 2006. Moore will receive \$70,000 in damages while the remaining funds will be distributed among the remaining qualified claimants whose eligibility will be determined by a procedure set forth in the decree.

In addition to the monetary relief, Robertson Sanitation, a division of Republic Services of Georgia, has agreed to exercise good faith in offering employment to qualified female applicants for residential, commercial, industrial and roll-off truck driver positions at the Winder and Austell facilities. According to the decree, "good faith will be measured against the standard of offering employment to at least 70% of the females in the qualified applicant pool."

The decree has a term of four years and requires Robertson to submit a report each year identifying the name, sex and qualifications of all qualified applicants for truck driver positions, the persons offered positions, and the persons hired. Robertson shall also maintain all driver applications for the duration of the decree for inspection, and provide an explanation for each time a qualified female applicant is not offered a position. The EEOC will have the right to review Robertson's compliance with the requirements of the decree through, among other things, inspection of all documents used or considered in the hiring process.

The decree also provides that Robertson shall not discriminate against qualified applicants on the basis of gender, nor retaliate against any person who opposed discriminatory practices or participates in proceedings under Title VII. The decree also includes provisions for equal employment opportunity training, reporting, and posting of notices. In the suit and consent decree, Robertson Sanitation denied any liability or wrongdoing.

The Focus

Movie Production Companies resolve Pregnancy Discrimination Case with EEOC

Crick Pictures, L.L.C., and Mandate Pictures, L.L.C., will pay \$75,000 to settle a federal pregnancy discrimination suit brought by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced recently. The EEOC's suit had charged that movie production companies Crick and Mandate refused to hire a pregnant job applicant, Cynthia Castillo-Hill, for a position as an extras casting assistant after they learned that she was expecting a baby. Castillo-Hill sought work on the film "Stranger than Fiction", which stars Will Ferrell.

"The EEOC's evidence in this case – which included an e-mail from the hiring supervisor – showed that the defendants believed that Castillo-Hill's pregnancy would prevent her from being able to handle the stress and long hours associated with the job though her own doctor had indicated that the job was appropriate," explained EEOC Chicago District Office head Jack C. Rowe.

The consent decree settling the suit, signed by Judge Gottschall of U.S. District Court in Chicago today, provides that the defendants will pay the pregnant applicant and her attorneys a total of \$75,000, less applicable taxes. The decree enjoins the companies from future pregnancy discrimination and retaliation. It also requires the defendants to provide training to their managers about the obligation to avoid discrimination

The EEOC is responsible for enforcing federal laws prohibiting employment discrimination based on race, color, gender (including sexual harassment and pregnancy), religion, national origin, age, disability and retaliation. Further information about the EEOC is available on its web site at www.eeoc.gov.