



BENEFIT NEWS BRIEFS

District Court Upholds DOL's (and Multiemployer Plan's) Denial of ARRA Subsidy To Applicant For Lack of Eligibility

This is the first court decision we know of that addresses an appeal to the courts for relief from a Department of Labor (DOL) decision under the expedited appeals process for denials of requests for the COBRA subsidy under *American Recovery and Reinvestment Act of 2009 ("ARRA")*. The *ARRA* provides for a 65% subsidy (reduction) in the COBRA premium otherwise payable by individuals who satisfy the following eligibility requirements:

- (A) at any time during the period that begins with September 1, 2008, and ends with December 31, 2009, such qualified beneficiary is eligible for COBRA continuation coverage,
- (B) such qualified beneficiary elects such coverage, and
- (C) the qualifying event with respect to the COBRA continuation coverage consists of the involuntary termination of the covered employee's employment and occurred during such period.

If a COBRA subsidy request is denied by the plan, the participant can appeal to the DOL and receive an expedited response within 15 days. Dissatisfied applicants can turn to the courts for relief if they are unhappy with the DOL response. For more detail on *ARRA* and the expedited appeal process see [Client Bulletin 2009-35](#) and prior issues mentioned therein. The Court's opinion is available by "[clicking here.](#)"

Background Facts About the Multiemployer Health Plan

The plaintiff was a carpenter who obtained health care coverage through Carpenters Health, a union-sponsored health benefit plan designed for employed carpenters. A participant can establish eligibility for coverage through Carpenters Health if he or she has worked a certain number of hours determined under one of two Rules:

- "Rule One" - an employee becomes eligible by working a minimum of 275 hours in three consecutive months for a contributing employer. The fourth month is a "lag month," which provides Carpenters Health time to receive and process an individual's work records. The employee may then be eligible for a three-month period of coverage beginning with the fifth month. A participant remains eligible for coverage

if he or she continues to work a minimum of 275 hours in each three-month period or qualifies under "Rule Two."

- "Rule Two" - provides that a participant who works a minimum of 1,250 hours in a twelve-month period is eligible for a three-month period of coverage beginning with the 14th month.

Plaintiff was employed from January 2008 through May 2008. During that time, he was a covered participant of Carpenters Health. By the time he was discharged, he had worked a sufficient number of hours to qualify for health coverage through October 31, 2008.

Plaintiff's Employment History, Request for and Denial of COBRA Subsidy

On September 18, 2008, plaintiff began working for a contributing employer but was terminated on September 24, 2008. At the time of his termination, he had not worked the minimum of 275 hours during the prior three months (July, August and September 2008) to satisfy Rule One. Nor had he worked 1,250 hours within the preceding twelve-month period to satisfy Rule Two. As a result, his coverage expired on October 31, 2008.

In April 2009, plaintiff requested that Carpenters Health allow him to receive COBRA continuation coverage at the reduced premium under the *ARRA* subsidy. Carpenters Health denied his request, explaining he was not eligible for the subsidy because his termination which led to the loss of coverage occurred before September 1, 2008 and his brief period of employment with a contributing employer thereafter did not re-qualify him to receive coverage.

Plaintiff Requests Expedited Review of Plan's Denial by DOL

After being denied the subsidy by Carpenters Health, the plaintiff requested expedited review by the DOL under *ARRA*, Section 3001(a)(5). The DOL subsequently informed him that he was not eligible because his loss of coverage occurred outside of the statutory time period. The plaintiff sued in District Court to reverse this.

Plaintiff Goes to Court After the DOL Rejects the Plaintiff's Request

The plaintiff contended the DOL improperly concluded that his loss of coverage occurred prior to September 1, 2008. The Court noted the statute is clear that the "qualifying event," which was the termination of plaintiff's employment, must have "occurred during [the statutory] period." citing *ARRA* Section 3001(a)(3) and *IRS Notice 2009-27* at p. 8.

Court Upholds DOL

The Court upheld the DOL, based on the reasons originally stated by the Plan - the plaintiff was discharged from his first employer well before that statutory time period for the COBRA subsidy eligibility and never regained eligibility under the Carpenters Health. The Court concluded the plaintiff did not show that the DOL's decision was arbitrary, capricious or contrary to law and denied him relief.

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