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March 2009

Employment Law Alert

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ABOUT OUR FIRM

The Phoenix Law Group of Feldman Brown Wala Hall and Agena, PLC focuses on the needs of business and health care clients both locally and nationally. Our firm was founded by seasoned business and health care attorneys who previously worked at large firms and Fortune 100 corporations.

Our lawyers recognize that in today's fast-paced world, clients require accessibility,

COBRA Rules Modified by Stimulus Package

Under the American Recovery and Reinvestment Act of 2009, employers are required to locate former employees who involuntarily lost their jobs (other than for gross misconduct) between September 1, 2008 and December 31, 2009, and inform them they are eligible for a 65% government-funded COBRA discount. The subsidies are available effective March 1, 2009, but *employers must notify individuals who are eligible for the subsidies of these changes by April 13, 2009*. The notice may either be incorporated into other COBRA materials explaining election rights or be sent with other COBRA material as a separate notice.

Assistance-eligible individuals are responsible for paying 35% of their COBRA premiums while eligible for the subsidy. Employers must pay the remaining 65%, but will be reimbursed by treating the COBRA premiums as a credit against the employer's regular payroll taxes. The subsidy ends on the earliest of: (1) when COBRA would normally end; (2) after nine months of subsidy; or (3) when the individual becomes eligible for coverage under another group health plan, a flexible spending arrangement, an on-site medical treatment program, or Medicare.

If an assistance-eligible individual were paying the full COBRA premium when the law was enacted, employers must reimburse the employee for any premium paid in excess of 35% or provide a credit in future premium payments for the employer-maintained overpayment.

The Department of Labor just published model notice forms, which can be found at: <http://www.dol.gov/ebsa/COBRAmodeInotice.html>. Additional information can be found at: <http://www.irs.gov/newsroom/article/0,,id=204708,00.html>.

Employers Should Begin Using the Revised Form I-9 on April 3

According to the U.S. Citizenship and Immigration Services (USCIS), beginning April 3, 2009, employers should begin using the revised Form I-9 for new hires and to re-verify employees with expiring documentation.

The USCIS delayed implementation of the revised Form I-9 to provide the Department of Homeland Security an opportunity for further consideration and to allow the public to submit comments. Both the current Form I-9 (Rev. 06/05/07) and the revised Form I-9 (Rev. 02/02/09) can be found at: <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=31b3ab0a43b5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>

Lily Ledbetter Fair Pay Act

President Obama signed the Lily Ledbetter Pay Act into law on January 29, 2009. The Act extends the deadline for pay discrimination claims

responsiveness, and sophisticated legal work at reasonable rates. As a small firm, we offer competitive fees based on the skill of our lawyers, not the expenses of administration.

brought under most federal anti-discrimination laws. The Act applies to discriminatory wage and salary payments as well as payments made under benefit and pension plans. Thus, employees may now file lawsuits for discriminatory pay decisions that were made long ago if the employee's pay is still affected by the decision. The Act is retroactive to May 28, 2007, which means that it applies to claims of pay discrimination pending on or after that date.

Employers should continue to use objective criteria, such as work and education experience, to make pay determinations. Employers also should review their documentation policies to ensure that decisions regarding employee compensation are adequately documented and retained for an appropriate period of time.

To join our mailing list contact: sharnagel@phoenixlawgroup.com

The information contained in this alert is intended for informational purposes only so that readers may learn more about recent developments in the law. These materials do not constitute, and should not be considered, legal advice. You are urged to consult with an attorney on your own specific legal matters and to receive advice about your specific situation.

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