



## Ohio Mini-COBRA Amendments and Coordination with Federal Stimulus Act

By Jason A. Rothman and Patricia  
Fleming Krewson

The American Recovery and Reinvestment Act of 2009 (Act), amended the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to, among other things, provide a premium subsidy for certain individuals who lose health coverage in connection with an involuntary termination of employment on or after September 1, 2008.

Small employers (those with fewer than 20 employees) must be aware that the Act also extends the premium subsidy to individuals who were covered under a small health plan not subject to COBRA, but subject to state law mandating certain continuation coverage (commonly referred to as "mini-COBRA").

On April 1, 2009, Governor Ted Strickland signed H.B. 2, which amended Ohio's mini-COBRA statute (*Ohio Revised Code* §3923.38 and §1751.53). One purpose of this bill is to allow individuals covered under small health plans to take full advantage of the federal subsidy.

### **The Federal Subsidy**

The Act provides that "assistance-eligible individuals" are enti-

## Preventing an Outbreak and the Spread of H1N1 Influenza at Work

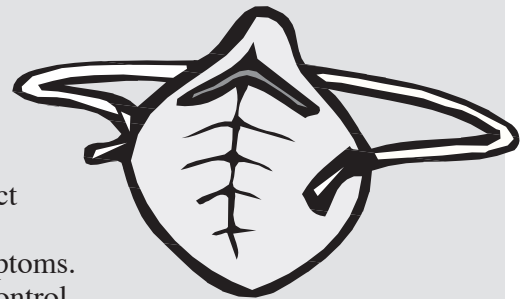
By Adrienne L. Rapp

Proactive employers can best protect the health of their employees by taking the following steps to guard against and mitigate the impact of an outbreak of swine flu at work:

- Educate employees about flu symptoms.
- Provide easy access to infection control supplies, including hand-cleansers, antibacterial products and tissues.
- Update your sick leave policies to address the flu. Encourage symptomatic employees to seek medical attention and stay home. Remember that certain employees may be entitled leave under the Family and Medical Leave Act.
- Make sure your employees know and understand your sick leave policies.
- Require an employee who has the flu to stay home during the entire period s/he is contagious (one day prior to and seven days after the appearance of symptoms).
- Strongly encourage symptomatic employees to seek medical attention.
- Ask cleaning staff to disinfect all workplace surfaces daily.
- Remain current with and follow the guidance provided by relevant health authorities, such as the Center for Disease Control.

Remember: When it comes to the swine flu, prevention is key.

*Adrienne L. Rapp is an attorney with the Cleveland office of Ulmer & Berne LLP.*



...tled to a 65 percent subsidy of the regular premium amount the former employee would otherwise be required to pay to maintain his or her coverage. This subsidy generally applies to individuals who experience(d) an involuntary termi-

...nation of employment from September 1, 2008 through December 31, 2009. The subsidy lasts for up to nine months from the time of termination.

Small employers are not obligated to pay any portion of the premium subsidy; rather, the insur-

*Cont. on page 2*

Mini-COBRA, cont. from page 1

ance company will claim the credit from the IRS for the 65 percent of the premium that is not paid by the former employee. Other (larger) employers generally have to cover the 65 percent subsidy, and then claim the credit.

### **Overview of the Amendments to Ohio's Mini-COBRA**

H.B. 2 requires that insurance policies issued, delivered or renewed after April 1, 2009, must include the following changes to state continuation law:

- Coverage has been extended from six months to 12 months.
- Entitlement to unemployment compensation is no longer required.
- Employees must be involuntarily terminated, other than for gross misconduct.
- Continuation coverage must include prescription drug coverage if it is included in the group coverage.

**The Act also extends the premium subsidy to individuals who were covered under a small health plan not subject to COBRA.**

Although small employers are not required to pay the 65 percent subsidy, they are required to notify former employees who are involuntarily terminated about their eligibility for the subsidy at the same time they provide mini-COBRA rights notification. Model notifications are available from the Ohio Department of Insurance's Web site at [www.insurance.ohio.gov](http://www.insurance.ohio.gov).

*Jason A. Rothman and Patricia Fleming Krewson are attorneys in the Cleveland office of the national labor and employment law firm of Jackson Lewis LLP.*

## **Congress Expands Scope of Federal False Claims Act**

*By Richard H. Blake*

On May 20, 2009, President Obama signed into law the Fraud Enforcement and Recovery Act of 2009 (FERA). In so doing, the government significantly expanded the scope of the federal False Claims Act (FCA), making it easier for whistleblowers and prosecutors to succeed in FCA cases against anyone dealing with the federal government. Under the FCA, businesses and individuals found to have submitted fraudulent claims (or to have retained funds they should not have received) are liable for three times the amount at issue, plus more than \$11,000 for each claim submitted. The following are some of FERA's more notable FCA amendments:

### ■ **Claims to Government Contractors and Grantees**

FERA expands FCA liability to any person who knowingly makes a false claim to obtain money or property provided by the federal government, regardless of whether that person deals directly with the government, or an agent acting on the government's behalf, or with a third party contractor, grantee, or other recipient of such money or property.

### ■ **Reverse False Claims**

FERA expands FCA liability to include instances where false statements or records may not exist, but there is a *knowing concealment* and a *knowing and improper avoidance or reduction of an obligation to repay the government*. FERA also expands the definition of "obligation" to include fixed and contingent duties owed to the government; it also expressly includes retention of overpayments.

### ■ **Conspiracy**

Prior to FERA, conspiracy to defraud the government was limited to getting a false or fraudulent claim paid. The FERA makes it clear that the government can bring a charge of conspiracy to violate the FCA if an improper payment was made and someone helped to conceal the impropriety of the payment. Furthermore, it is no longer necessary for a false claim to be paid or approved in order to be considered a conspiracy.

### ■ **Whistleblower Protection**

Prior to FERA, the FCA only protected employees from retaliation (e.g., demotions, suspensions, harassment, and other employment discrimination) because of that individual's actions to further a whistleblower lawsuit. FERA expands the scope of whistleblower protection to include contractors and agents.

### ■ **Materiality Requirement**

FERA makes clear that not all false statements and false records violate the FCA. Rather, only those false statements and records that are "material" to a false or fraudulent claim violate the FCA. FERA defines the term "material" as "having a natural tendency to influence, or being capable of influencing, the payment or receipt of money or property."

### ■ **Civil Investigative Demands (CIDs)**

Prior to FERA, only the U.S. attorney general could authorize a CID for use in a FCA investigation. FERA expands the government's ability to use CIDs by authorizing the attorney general to appoint designees who can approve them. Those designees are authorized to share information obtained through a CID with the whistleblower.

*Richard H. Blake is a partner in the Cleveland office of Bricker & Eckler LLP, and chair of the firm's White Collar Defense and Internal Investigations Practice Group.*