

# STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A.

December 22, 2009

## LABOR AND EMPLOYMENT CLIENT ALERT

### COBRA SUBSIDY EXTENSION REQUIRES IMMEDIATE EMPLOYER ACTION



'Twas the week before Christmas and all through Congress, the representatives and senators were hard at work passing a military spending bill to which they added an extension of the COBRA subsidy that originally was enacted as part of the 2009 stimulus bill passed in February 2009.

#### SUMMARY

- The COBRA subsidy allows employees (and their dependents) who were terminated from employment “involuntarily” to pay only 35% of the premium that otherwise would be due for COBRA coverage. The subsidy lasted for nine months.
- Without the extension, the COBRA subsidy would not have applied to a terminated employee who became eligible for COBRA after December 31, 2009. The COBRA subsidy extension does not otherwise change the requirements for the COBRA subsidy, e.g., the subsidy no longer applies once the former employee becomes eligible for coverage under another employer’s plan. For more information about the originally-enacted COBRA subsidy, [CLICK HERE](#).
- The COBRA subsidy extension requires the subsidy to apply to employees who are terminated involuntarily from September 1, 2008 through February 28, 2010 and to last for up to 15 months.
- The subsidy extension has retroactive application for former employees who were terminated involuntarily and eligible for the original COBRA subsidy, but whose COBRA subsidy already expired (without this new law).

#### WHAT EMPLOYERS NEED TO KNOW

- Recommended steps for [COMPLIANCE](#).

#### MIAMI

Museum Tower  
150 West Flagler Street  
Suite 2200  
Miami, FL 33130  
(305) 789-3200

#### FORT LAUDERDALE

New River Center  
200 East Las Olas Boulevard  
21<sup>st</sup> Floor (Penthouse A)  
Fort Lauderdale, FL 33301  
(954) 462-9500

#### TAMPA

SunTrust Financial Centre  
401 East Jackson Street  
Suite 2200  
Tampa, FL 33602  
(813) 223-4800

#### TALLAHASSEE

Highpoint Center  
106 East College Avenue  
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## NOTICES OF THE COBRA SUBSIDY EXTENSION MUST BE PROVIDED AS FOLLOWS:

- By February 17, 2010 (60 days after enactment), employers must notify each employee involuntarily terminated on or after October 31, 2009, or who had been terminated earlier but was still using the COBRA subsidy on or after October 31, 2009, and their eligible dependents, of the COBRA subsidy extension.
- By February 17, 2010, employers must notify each former employee (and eligible dependents) who previously was eligible for the COBRA subsidy but who quit paying the required premium (whether before or after the old subsidy expired) and under the extension will be eligible again for the subsidy. The former employee will have until the later of (a) 30 days after receiving notice or (b) February 19, 2010, to make payment of the retroactive premium due.
- By February 17, 2010, employers must notify a former employee (and eligible dependents) who previously was eligible for the COBRA subsidy and who now is paying the full COBRA premium that the employee again will be eligible for the subsidy. The employer must either (a) refund the amount the employee overpaid (because the subsidy had expired before the extension) or (b) provide credit toward future COBRA premiums of the overpaid amount.

For employers with calendar year open enrollment, the retroactive application of the COBRA subsidy extension will require another open enrollment period for former employees who now have the second chance to take advantage of the COBRA subsidy extension and who let their COBRA coverage drop by not paying the premium. This includes a former employee who is re-employed as long as he or she is not eligible for health plan coverage with the new employer (or any other employer, such as under a spouse's plan).

For more information, contact:

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# STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A.



[Sharon Quinn Dixon](#) is a Shareholder in both the Tax Department and Labor and Employment Department. Ms. Dixon's practice focuses on employee benefits and estate planning. Ms. Dixon counsels business clients about their employee benefit plans and executive compensation, including 401(k) plans, medical and other welfare benefit plans, COBRA issues, Section 125-Cafeteria Plans, Code Section 409A issues and tax and ERISA compliance and litigation matters. Additionally, Ms. Dixon is experienced with merger and acquisition due diligence reviews, planning for employee benefits in implementing Family Leave Act policies and incentive and nonqualified stock option plans. Ms. Dixon counsels individual clients in the development and implementation of their estate plans, including federal estate and gift tax issues. Ms. Dixon represents corporate and individual fiduciaries in connection with the administration of estates and personal trusts. Ms. Dixon has particular expertise in estate planning for retirement benefits.

## Practice Areas

Employee Benefits

Labor and Employment

Tax

Trusts and Estates

## Industries

Healthcare

Hospitality and Leisure

## Education

B.S., summa cum laude, Bradley University, 1978

J.D., cum laude, University of Miami, 1982

LL.M. in Taxation, University of Miami, 1988

## Admissions

Florida, 1982

## Ratings & Certifications

AV Rated by Martindale-Hubbell

Florida Bar Board-Certified Tax Attorney

## Representative Experience

- Review and redesign of numerous deferred compensation arrangements for compliance with Internal Revenue Code Section 409A
- Redesign of multiple retirement plan arrangements of acquired health care entities
- Representation of employer-plan sponsors in audits of IRS and U.S. Department of Labor
- Correction of 401(k) and retirement plan compliance deficiencies and submission for IRS approval
- Successful defense of IRS challenges to estate tax valuation

## Professional and Community Involvement

- American Bar Association, Tax Section, Employee Benefits Committee, Member
- Children's Home Society, Southeastern Division, Board Member
- Fellow, American College of Employee Benefits Counsel
- The Florida Bar Real Property, Probate and Trust Law Section, Member
- Estate Planning Council of Greater Miami, Miami
- South Dade Estate Planning Councils, Member and Past President
- United Way of Miami-Dade, Finance Committee, Member

## Recognition

- *Chambers USA: America's Leading Lawyers for Business*: Ranked #1 in Tax, 2005-2009
- *Florida Super Lawyers*, selected for inclusion, 2006-2009
- *Florida Trend's*, Florida Legal Elite, selected for inclusion, 2006
- *The Best Lawyers in America*®, selected for inclusion, 1993-2010
- *South Florida Legal Guide* - "Top Lawyers in South Florida," selected for inclusion, 2008-2009

# STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A.

## EMPLOYEE BENEFITS

Stearns Weaver Miller's Employee Benefits practice group counsels employers in the design, implementation and operation of employee pension and welfare plans and executive equity and deferred compensation programs. We also represent employers before the Internal Revenue Service and the Department of Labor in the matters of initial and continuing tax qualification and audits of plans. We advise employers on handling employees' claims for benefits, as well as strategizing the defense of any claims. Further, we have considerable experience providing tax advice and services to tax-exempt organizations in their efforts to provide competitive benefits to diverse groups of employees.

Our lawyers have handled significant and sophisticated ERISA litigation on behalf of employers, plan administrators, trustees, and individual defendants. We have handled the defense of numerous types of claims, including, claims for severance, disability and other welfare benefits; claims for benefits under ERISA top hat plans, such as supplemental executive retirement plans; claims for breach of fiduciary duty against corporate board members, internal benefits appeals committees, and trustees; claims of procedural and substantive violations under ERISA plans; discrimination under ERISA § 510; and claims for executive benefits and stock options.

We have litigated ERISA cases in state court, federal district court, the Eleventh Circuit Court of Appeals, and have briefed issues to the United States Supreme Court. Our Employee Benefits lawyers have experience with issues of ERISA exhaustion of administrative remedies requirement and futility issues, ERISA preemption, statute of limitations issues (regarding both fiduciary and non-fiduciary claims), distinguishing between fiduciary and settlor functions, issues relating to the appropriate standard of review and plan administrators' conflicts of interest, interpretation of plan amendment, termination, vesting, accrual and anti-cutback provisions, remedies available for technical procedural violations, delegation of fiduciary and claims administration functions, ERISA's church plan exemption, and attorney-client privilege issues.

### Range of Services

- Cafeteria Plans
- COBRA
- Early Retirement and Severance Pay Programs
- Employee Benefits and Leave Policies
- Employee Benefits for Professional Employer Organizations
- Incentive and Nonqualified Stock Option Plans
- Income and Estate Planning for Retirement Benefits
- Due Diligence Reviews
- Nonqualified Deferred Compensation and Supplemental Retirement Plans
- Qualified Retirement Plans
- Tax and ERISA

### Top Ranked in Florida

"Sharon Quinn Dixon *impresses market observers with her standout work on employee benefits and executive compensation*. She advises clients on 401(k) plans, medical and other welfare benefit plans, COBRA issues and ERISA compliance and litigation." – *Chambers USA, 2009*