

Wharton Aldhizer & Weaver is one of the oldest and most respected practices in the state. For more than 160 years, WAW has served clients throughout Virginia, most Mid-Atlantic states and numerous states located in the Eastern United States. Our attorneys are dedicated to providing value and comprehensive legal services for clients ranging from large institutions and publicly-held corporations to small businesses and individuals. As one of the state's larger firms, WAW offers a most extensive list of practice areas. WAW has built its solid reputation on a proven track record of values, responsiveness, and service.

With a roster of practice areas unrivaled in the region, WAW focuses on building long-term partnerships with its clients by offering sophisticated services more typical of firms in larger metropolitan areas. Each of the attorneys at WAW brings several areas of extraordinary experience and skill to the practice of law, allowing us to maintain a dynamic, flexible firm structure. The breadth of our experience and our cooperative culture enable us to offer our clients the sophistication and expertise of a larger firm, while retaining the responsiveness and efficiency of a smaller firm. Our goal is to provide our clients with the highest quality of service in the most cost-effective manner.

To achieve this end, we carefully staff all projects, matching client objectives with the professional skills and experience of our practitioners. Whether we are retained to provide representation for a single matter or to handle a client's ongoing legal needs, we strive to develop a close working relationship with our clients so that we may effectively represent them. If you are looking for a law firm to support your needs and requirements, please feel free to contact any of our attorneys either by phone or by visiting our website at www.wawlaw.com.

Note About the Author

Jill M. Lowell is a member of WAW's litigation team and has extensive experience in the field of employment law. She counsels employers on a broad range of issues including compliance with state and federal discrimination, leave, and disability laws. She also drafts employment and severance agreements, and advises companies on how to avoid potential costly litigation when downsizing.



For more information on topics contained in the WAW Business Law Briefings, contact Ms. Lowell at (540) 438-5330 or send an email to jlowell@wawlaw.com.

Practice Areas

Alternative Dispute Resolution

Business & Corporate Law

-Business & Financial Transactions

-Contracts

-Organization & Planning

-Succession, Start-ups, & Reorganization

Commercial Finance

Construction & Environmental Regulation

Corporate Bankruptcy & Creditors' Rights

(Law Firm is a Debt Relief Agency)

Employment & Employee Benefits

Health Care: Regulatory & Litigation

Immigration Law

Intellectual Property Law

-Compliance & Dispute Resolution

-Digital Commerce

-Patents, Copyright, & Trademarks

-Technology Transfers

Litigation & Trials

-Appellate Practice

-Civil

-Commercial

-Insurance Defense

-Medical Malpractice

Personal Injury & Wrongful Death

Real Estate

-Acquisition

-Eminent Domain

-Finance & Development

-Land Use, Zoning, & Subdivision

-Sale

Taxation & Tax Planning

Wills, Trusts, Estate Planning &

Administration



WHARTON ALDHIZER & WEAVER PLC

WAW Business Law Briefings

100 South Mason Street · Harrisonburg, VA 22801 · Main (540) 434-0316 · From Staunton (540) 885-0199 · Fax (540) 434-5502

How to Comply with the ARRA and its COBRA Implications.

The American Recovery and Reinvestment Act of 2009 (aka the "stimulus bill") offers a 65% subsidy for up to nine (9) months to assist many out-of-work employees and their families in maintaining continuing health care coverage under COBRA. To be eligible for the full subsidy, the covered employee must have involuntarily lost his or her job between September 1, 2008, and December 31, 2009, and earned less than \$125,000 (\$250,000 for joint filers) prior to termination. The subsidy is phased out for those earning between \$125,000 and \$145,000 (or \$250,000 - \$290,000 for joint filers).

Employees eligible for Medicare or other qualifying group health coverage at the time of termination or while receiving the COBRA subsidy, will no longer be eligible for the subsidy. For example, a former employee eligible for coverage under his or her spouse's health insurance plan would not be eligible for the COBRA subsidy.

Practically speaking, employers will need to first identify everyone in their organization who is or was eligible for COBRA through an involuntary termination between September 1, 2008, and February 16, 2009. Of these individuals, the employer will need to determine who failed to elect COBRA as of the enactment date or who elected it but subsequently lost coverage (for example, by failing to pay COBRA premiums). Each of these individuals must be provided a Notice of Special Election Period and Subsidy on or before April 18, 2009. For any individual involuntarily separated from employment on or after February 17, 2009, he or she must be provided a Notice of Subsidy Rights. The DOL has issued model notices on March 19, 2009, and they are available online at www.dol.gov/ebsa/COBRAModelNotice.html.

The individual receiving the subsidy must pay the nonsubsidized portion of the COBRA premium (35%) to her former employer, health

see ARRA page 3

Downsizing in a Tough Economy – Reductions in Force Can Cost More if Not Done Correctly.

In this volatile economy, many businesses are evaluating how to survive and often turn to RIFs to increase short-term financial viability. But for those businesses that are not careful, a RIF can actually cost the company more in the long run if it does not comply with numerous federal and state laws. Following a RIF, former employees sometimes sue, claiming that the employee selection process utilized for the RIF was designed and implemented to weed out members of a protected class, such as older or more senior employees, or the RIF is claimed to have had a disparate impact on a protected class.

There are a few things companies can do to prevent these types of discrimination lawsuits and successfully defend against them when filed. First, when deciding whether a RIF is necessary, employers should consider all alternatives. Although not required, implementing less drastic measures is likely to appease employees who may otherwise sue if they are involuntarily terminated. After all, pay freezes, reductions in hours, and voluntary leaves of absence have an immediate financial advantage to the employer, without imposing the severe financial burden RIFs place on a terminated employee. Other options, if feasible, include voluntary separation

see DOWNSIZING page 3