

# Surviving The Credit Crisis: Don't Forget Human Resources

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# The Obama Effect on HR

- American Recovery and Reinvestment Act (ARRA)
- Employee Freedom of Choice Act (EFCA)
- Lilly Ledbetter Fair Pay Act
- Healthcare System Reform



# American Recovery & Reinvestment Act (ARRA)

- Provisions of ARRA affect the Consolidated Omnibus Budget Reconciliation Act of 1975 (COBRA)
- Intent is to help workers who involuntarily lost their health insurance the ability to re-purchase it for a fraction of the original cost for up to nine months.



# COBRA 101 Refresher Course

- Employers with more than 20 employees **MUST** comply with COBRA regulations.
- Allows for most terminated employees to continue the same coverage for up to 36 months.
- Notice must go out within 14 days of loss of coverage
- Beneficiary has 60 days to elect coverage and up to another 45 days to pay initial premium.



# COBRA 101 Refresher Course

- Employer can only bill for current month premium.
- Beneficiary has 30-day\* grace period to pay monthly premium.
- Employer may terminate beneficiary back to bill date prior to grace period if unpaid.
- Once termed for non-payment, benefit ends – cannot be re-instated.



## American Recovery & Reinvestment Act (ARRA)

### KEY COMPONENTS

- Employees must have been involuntarily terminated between 09/01/2008 & 12/31/2009 and meet certain income requirements.
- Eligible individuals are referred to as Assistance Eligible Individuals (AEI).
- AEI pays 35% of total COBRA premium, which employers must accept as payment in full.
- The employer gets reimbursed the remaining 65% through payroll tax credits.



## American Recovery & Reinvestment Act (ARRA)

### KEY COMPONENTS

- Subsidy applies to all COBRA-eligible group health plans sponsored by an employer except for medical flexible spending accounts (FSA).
- Allows employers to offer beneficiaries the opportunity to change to a less costly benefits options. If offered, beneficiaries have 90 days from the receipt of the COBRA election notice to make a plan selection.



- Subsidies are not available on a retroactive basis. Only future months of coverage are eligible.
- A special 60 day enrollment period was offered to all eligible beneficiaries involuntarily terminated between 09/01/2008 & 02/17/2009 (the enactment date) even if they declined COBRA coverage at the original time of election.

## American Recovery & Reinvestment Act (ARRA)

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## American Recovery & Reinvestment Act (ARRA)

- Employer must have sent out special COBRA election notice.
- COBRA eligibility periods are still measured from original qualifying event date.
- Beneficiaries become ineligible for the subsidy when they have received up to 9 months or become eligible for other group coverage or Medicare.

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## American Recovery & Reinvestment Act (ARRA)

- Beneficiary is responsible for notifying the government if they are no longer eligible for the subsidy.
- Failure to do so is punishable by a penalty equal to 110% of the subsidy received after becoming eligible for other coverage.
- Full subsidy paid for individual filers with modified adjusted gross income of \$125,000. (\$250,000 for joint filers).

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- If an individual makes above the subsidy limitation they may qualify for a reduced subsidy amount. If so, they will have their individual income tax increased by the percentage of their total COBRA subsidy.

## American Recovery & Reinvestment Act (ARRA)

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# Employee Freedom of Choice Act (EFCA)

- Legislation introduced on March 10, 2009 by Rep George Miller (D-CA) in the House as HR 1409 and Sen Edward Kennedy (D-MA) in the Senate as S 460.
- Identical legislation that passed the House in 2007 but stalled in the Senate.



# Employee Freedom of Choice Act (EFCA)

- EFCA would require the National Labor Relations Board (NLRB) to certify a union without directing an election if a majority of the bargaining unit employees have signed authorization cards in support of the union.



# Employee Freedom of Choice Act (EFCA)

- EFCA would require binding arbitration on first contracts after 90 days of collective bargaining and 30 days of mediation.
- EFCA would increase penalties, including back pay plus liquidated damages, on employers that commit unfair labor practices against employees during organizing drives.



# CURRENT NLRA PROVISIONS FOR ORGANIZING EMPLOYEES

## By Election



# OR

A form titled "YES, I WANT THE IAM" for authorization. It includes fields for name, address, city, email, dept, work area/zone, shift, classification, phone, union here, station, and employee #. A note at the bottom states: "NOTE: This authorization to be SIGNED and DATED in EMPLOYEE'S OWN HANDWRITING. YOUR SIGNATURE AND DATE ON THIS CARD IS PROTECTED BY FEDERAL LAW." The form is tilted slightly to the right.

## By Authorization Cards



## CURRENT NLRA PROVISIONS FOR ORGANIZING EMPLOYEES

- ✓ Election – after at least 30% of the employees in the bargaining jurisdiction sign a petition in support, NLRB administers a private ballot election. Majority vote in favor of the union wins representation.



# CURRENT NLRA PROVISIONS FOR ORGANIZING EMPLOYEES

- ✓ Authorization Cards – union proponents circulate official authorization cards among employees asking for signatures in support of the union. If a majority of the employees sign the cards, and the NLRB certifies the cards as valid, union wins representation.



# CURRENT NLRA PROVISIONS FOR ORGANIZING EMPLOYEES

## By Election



# Employee Freedom of Choice Act (EFCA)

## PROPONENTS

- EFCA does not take away the secret ballot.
- EFCA is needed to protect workers from intimidation.
- NLRB process is unfair.

## OPPOSITION

- Not directly, but allows union to bypass it if collects cards from 50% +1 of the unit.
- Secret ballot is the most effective way for validating majority representation in a non-intimidating manner.
- NLRB reports unions win more than half the elections under current law.



# Employee Freedom of Choice Act (EFCA)

## PROPONENTS

- Current process is too slow.
- Workers want EFCA to become law.

## OPPOSITION

- NLRN stats show the median time between certification and election is 39 days.
- McLaughlin & Associates Poll in 01/2009 show 74% of union households oppose EFCA....want Congress to focus on other things like jobs and health care.



# The Obama Effect on HR

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- Healthcare System Reform



# Lilly Ledbetter Fair Pay Act

- President Obama's first enacted law.
- Act overrules a 2007 US Supreme Court decision in Ledbetter v. Goodyear Tire & Rubber Co.
  - Court upheld that the 180-day time limit for filing a charge under Title VII of the Civil Rights Act starts after the alleged unlawful employment action, and does not re-start upon receipt of each successive paycheck.
- The Obama Administration and the majority of Congress felt the decision was unfair to Ledbetter, who had been paid a lower salary than her male counterparts at Goodyear for 20 years.



# Lilly Ledbetter Fair Pay Act – Key Provisions

- **Changes statute of limitations** – Act makes the issuance of a paycheck a potential discriminatory action. By making the time clock re-start each time an employee received a paycheck (or retiree receives an annuity check), the Act allows individuals to bring discrimination claims many years after an alleged act of discrimination occurred.



# Lilly Ledbetter Fair Pay Act – Key Provisions

- **Expands the potential field of plaintiffs** – Act allows an employee who was discriminated against and other individuals who were “affected” by the act of pay discrimination (including spouses, children, close family members and potential others) to file suits over an employee’s pay.



# Lilly Ledbetter Fair Pay Act – Key Provisions

- **Amends other civil rights statutes** – Act will extend the statute of limitations for filing claims for all protected classes of employment law, including gender, age, color, disability, race, religion and national origin.
- **Retroactive effective date** – Act takes effect as if enacted on May 28, 2007 (the day of the Ledbetter court decision) and applies to all pay discrimination claims pending on or after that date.



# The Obama Effect on HR

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- **Healthcare System Reform**



# Healthcare System Reform

- As of June 4<sup>th</sup> four (4) health care reform bills have been introduced in the Senate.
- A bill from Sen. Max Baucus (D-MT) and another from Sen. Edward Kennedy (D-MA) are expected this month & considered front runners.
- Sen. Kennedy is the head of the Senate's Health Committee.



# Healthcare System Reform

- Prior to their introduction, only a few elements are clear that should be part of the bills:
  - “No chance” of a single-payer system (ala Canada)
  - The plan will involve government & the private sector
  - Individual mandate to purchase insurance
- Behind the Scenes
  - Insurance lobbies now say they are willing to live with the rules forcing them to accept all patients without regard the “pre-existing” conditions – but only if accompanied by an individual mandate.



# Healthcare System Reform

- Behind the Scenes

- It appears to be gaining support to pay for the program with a partial abolishment/or cap of the tax exclusion currently granted on employer-sponsored health insurance. (Currently those covered with employer-sponsored plans as a benefit do not pay taxes on that benefit).
- Note worthy point, Sen. McCain was grilled by Mr. Obama on the campaign for exactly this idea. The President also opposed individual mandates. Both are seen to be acceptable by him now.



# The Obama Stimulus Plan: Its Effect on Human Resources

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