

Laid-off workers have few rights, fewer benefits

Posted by [rdimesio](#) April 11, 2009 19:30PM

First, Kevin Taylor lost his job.

Then, the 40-year-old parts finisher at Monaco Coach Corp. lost his health insurance.

Across Oregon, thousands of laid-off workers such as Taylor are discovering that, being unemployed, they have little recourse.

Q&A

Maintaining medical insurance is one of the greatest challenges facing families who have lost jobs during the economic downturn. Here's some basic information about medical benefits for the unemployed, and new federal assistance programs to reduce medical costs.

COBRA

Q: What is COBRA?

A: COBRA is a federal law that allows employees in firms with 20 or more workers to continue coverage through their former employer's health plan, generally up to 18 months, which includes coverage for dependents. Normally, people must pay the employer and employee cost of premiums, plus an administrative fee of up to two percent.

Q: What will the federal stimulus do?

A: The American Recovery

As joblessness swells across the nation, new federal programs are meant to help bridge the gap. The Obama administration's American Recovery and Reinvestment Act offers millions of dollars to retrain workers or give health coverage to those who've lost their jobs.

But for people such as Taylor, the final layoff notice delivers a heavy dose of reality.

Because the now bankrupt Monaco was self-insured, the father of two can't obtain employee-paid COBRA coverage after the company eliminated its insurance programs. In his case, even subsidies for COBRA payments recently approved by Congress are of no help.

"I probably wouldn't be able to afford COBRA anyway on my unemployment check," said Taylor, who worked for a decade in Monaco's fiberglass factory in Hines, near Burns. "A lot of us have been laid off so many times over the past year, our unemployment has run out. It's just a rough deal."

If an employer goes bankrupt, it's possible that laid-off workers could lose their COBRA coverage, even if the company isn't self-insured, said Tom Kramer, who specializes in employee benefits at Bullard Smith Jernstedt Wilson. Losing health insurance is one of the first things to go, which could leave laid-off workers with medical claims that weren't paid prior to the bankruptcy filing.

For Taylor, that means hospital visits and doctor appointments as much as 90 days before the bankruptcy filing could fall on his shoulders.

"If a company liquidates, there's no coverage going forward," said Jim Waggoner, a Portland bankruptcy attorney with Davis Wright Tremaine.

For 35-year-old Jason Rinehart, an electrician for Monaco, losing health insurance has thrown his family into crisis. His 16-year-old son has cerebral palsy and a single medication can cost \$950 a month.

"The health insurance is a big struggle," Rinehart said. "When the company closed its doors, it didn't just take my pay."

If you've lost your job recently, this is what you need to know.

and Reinvestment Act will cover 65 percent of a laid-off worker's premiums for up to nine months of COBRA eligibility. People laid off by the state or federal governments could be eligible for a similar benefit under a separate program.

Q: What is mini-COBRA are mini-COBRA's?

A: These state laws help workers in businesses with fewer than 20 workers continue health coverage if they lose their jobs. Small group health plans must provide continued coverage to laid-off workers, if workers pay both the employer and employee share of the premium.

Stimulus

Q: Who's eligible for stimulus assistance?

A: People who are eligible for COBRA, state continuation benefits, or continuation of a federal or state employees' health plan due to because of involuntary job loss between Sept. 1, 2008, and Dec. 31, 2009. The level of subsidy varies by income. It can cover the worker and/or the worker's covered spouse, partner or dependents. Those who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for

WARN Act

Under the federal Worker Adjustment and Retraining Notification Act, commonly called WARN, Taylor should have been given 60 days notice before losing his job. He says he didn't get that notice.

Lawyers and representatives of Coburg-based Monaco Coach did not return calls Friday.

Hit by the economic slowdown, Monaco had cut hours the past year. In 2008, workers took one week off each month because of slow sales. Some months, they had two weeks off.

In December, the company put workers on furlough, telling them they would be called back in January. It soon became February, then March 5, the company filed a WARN notice with state officials, terminating Taylor's job immediately.

"I knew something was coming, they kept putting off calling us back," Taylor said. "But on the other end, you hang in."

Under the WARN Act, employers with more than 20 employees are supposed to give workers 60 days notice before laying them off, with the exception of certain circumstances.

But for employers who don't comply, there's no enforcement by the state.

"There's not really any teeth to the law," said Karen Humelbaugh, a director with the Oregon Department of Community Colleges and Workforce Development. "Workers would have to go through the civil courts."

Several Monaco employees have banded together and filed a class-action lawsuit against the company. But, according to legal experts, it's unlikely they'll get awarded their lost wages.

"Sixty to 80 percent of the time, the workers lose the case," said Tony Paris, a staff attorney at the nonprofit Sugar Law Center in Detroit, which specializes in workers' rights. "Especially if there's a bankruptcy, the workers would have to get in line with the other creditors. It's usually the fourth or fifth priority."

COBRA insurance

Under federal law, Taylor would have qualified for COBRA, a program meant to guarantee the unemployed a medical security blanket if Monaco hadn't been self-insured.

But a week after Taylor received a letter telling him he was covered by COBRA, he got another saying that he wasn't.

The letter dated March 18 stated, "The cancellation of our health plan is, to a very large extent, an effort to protect you and the ongoing Monaco employees from

premium reduction.

Q: How will people get premium assistance?

A: People who have been involuntarily terminated from a job will pay 35 percent of the cost of their premiums to their former employer's health plan. The employer or health plan will be reimbursed for the remaining 65 percent by deducting this amount from the quarterly employment taxes it would otherwise pay the federal government. If it is owed more than it can deduct, the employer or health plan will receive a refund or credit from the overnment.

Q: What if someone pays full premiums after the law takes effect, starting Feb. 17, 2009, when they are they entitled to the premium assistance?

A: For the first or second period that COBRA premiums are due after the law is enacted, if a person pays full premiums, he or she is entitled to reimbursement or a credit toward future premiums.

Q: What about people who lost jobs after September but before the law was enacted?

A: Those who did not elect COBRA will have a new 60-day period to elect COBRA after they get

being left with unpaid claims and wasted premium dollars."

Under COBRA, Taylor would have had to pay the full amount of his premium out of his own pocket. On his unemployment check, that would have been impossible.

The American Recovery and Reinvestment Act will help qualified laid-off workers pay for up to 65 percent of their COBRA premiums, Humelbaugh said.

"A lot of people who are collecting unemployment can't afford COBRA," Humelbaugh said.

When a company is in bankruptcy, there's no obligation to continue supporting worker insurance programs, which is necessary for COBRA to kick in.

"I can live without insurance," Taylor said. "But my kids are the ones I worry about."

-- Amy Hsuan,
amyhsuan@news.oregonian.com

Categories: [Best of Business](#), [Breaking News](#)

notice about available help. In addition, people who lost jobs and elected COBRA after September but who are no longer enrolled (presumably due to because of costs) also have a new election period. Under the federal time schedule, it might take until April 18 for individuals who have already lost jobs to receive notice of their eligibility for help. They then will have another 60 days to elect COBRA.

Q: Will people be subject to a new pre-existing condition exclusion period if they did not elect COBRA until premium assistance was available?

A: No. The law does not count the period before assistance was available as part of a "break in coverage" that would subject a person to pre-existing condition exclusions.