

## ERISA &amp; DISABILITY BENEFITS NEWSLETTER

## ABOUT OUR FIRM

Eric Buchanan & Associates, PLLC is a full-service disability benefits, employee benefits, and insurance law firm. The attorneys at our firm have helped thousands of disabled people who have been denied social security disability benefits, ERISA LTD benefits, health insurance, life insurance and other ERISA employee benefits, as well as private disability and health insurance benefits.

For more information about Eric Buchanan & Associates, PLLC, visit our website at [www.buchanandisability.com](http://www.buchanandisability.com).

## VOLUME 1, ISSUE 9, NOVEMBER 2009



Eric L. Buchanan, R. Scott Wilson, and D. Seth Holliday are certified as Social Security Disability Specialists by the Tennessee Commission on CLE and Specialization.

## UNDERSTANDING COBRA HEALTH INSURANCE CONTINUATION BENEFITS BY: DAVID VEAZEY

Often when a person first faces a life-changing disabling event, difficult financial questions will arise. The first question: "How will I replace my lost income if I cannot work?" The second: "How will I treat my disabling medical condition if I no longer have health insurance?" The first issue can be addressed by applying for Social Security and Long-Term Disability benefits. The second issue is a little more difficult since Medicare benefits for someone qualifying under Social Security may be up to two years away. With all the faults of the current health care system, there is limited relief for such people through COBRA.

COBRA, which stands for the uninspiring name of "Consolidated Omnibus Budget Reconciliation Act of 1986," provides an opportunity for persons who belonged to an employee group health plan (with 20 or more employees) to temporarily maintain their health coverage after terminating their employment. They must have belonged to the group health plan at the time they lost their job for reasons other than gross misconduct or had their hours reduced so that they no longer qualified for the group health plan. Termination is just one of the "qualifying events" defined under 29 U.S.C. § 1163 and is the one typically faced by disabled clients.

The general rule for the length of time that employers must provide COBRA coverage for those who lost their job or had a reduction in hours is 18 months. 29 U.S.C.

§ 1162(2)(A)(i). However, if a terminated employee is found to be disabled by Social Security within 60 days of the qualifying event, coverage is extended to 29 months as long as the plan administrator is notified within 60 days of SSA's determination and before the initial 18 month coverage period elapses. 29 U.S.C. § 1162(2)(A)(v).

There are other types of qualifying events that provide relief if the employer goes bankrupt or the employee's spouse or dependents (other qualified beneficiaries) would lose their health coverage. Normally, if the employer ends group health coverage for all employees, it is not required to continue COBRA coverage for former employees. But if the employee loses health coverage *because* the employer goes bankrupt, the employee can still qualify for COBRA coverage for life. 29 U.S.C. § 1163(6); § 1162(2)(A)(iii). Spouses and dependents can receive COBRA benefits for 36 months upon the death of or divorce from the covered employee. 29 U.S.C. § 1163(2)(A)(iv). If a dependent child becomes no longer a dependent, the coverage period is also 36 months. *Id.* If any additional qualifying event occurs after the employee is terminated or has a reduction in hours, the period is extended to 36 months. 29 U.S.C. § 1162(2)(A)(ii).

In order for COBRA to work, the employer, the plan administrator (usually the insurance company), and the covered employee or other qualified beneficiary have to fulfill

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certain obligations. The employer must notify the plan administrator within 30 days of the qualifying event. 29 U.S.C. § 1166(a). The plan administrator must then notify the former employee within 14 days of notification by the employer. 29 U.S.C. § 1166(a)(4), (c). The plan administrator must allow the former employee 60 days to elect to continue health coverage under COBRA and another 45 days after making the election to pay the first premium. 29 U.S.C. § 1162(3). The covered employee or beneficiary can elect COBRA coverage anytime within the first 60 day period, even if she first waives coverage during this period. *Id.* For qualifying events other than termination, such as divorce or a dependent child becoming no longer a dependent, the covered employee or qualified beneficiary must notify the plan administrator within 60 days of the event. 29 U.S.C. § 1166(a)(3). Coverage would become effective on the date of the qualifying event.

The employer and plan administrator must provide health coverage at least at the same unsubsidized premium offered to all other employees on the group plan plus 2% for administrative costs. 29 U.S.C. § 1162(3). Thus, if the employer normally subsidizes premiums for its employees, it is not required to subsidize premiums for former employees on COBRA. Although this may result in severe sticker shock for the beneficiary who was used to paying a fraction of the cost, the amount would likely be much lower than premiums charged on an individual health plan.

The employer can end COBRA coverage for the former employee early if it ends group health coverage for employees altogether. 29 U.S.C. § 1162(2)(B). The employer can also cut COBRA short if the beneficiary joins

another group health plan (unless it excludes or limits pre-existing conditions), if the beneficiary becomes qualified for Medicare after the COBRA election<sup>1</sup>, or neglects to pay premiums on time (within 30 days of the date due). 29 U.S.C. § 1162(2)(C)-(D). There is also a provision that allows employers to end COBRA coverage early if the beneficiary once qualified for a COBRA extension from 18 to 29 months due to qualifying for Social Security disability but later receives a "final determination" from the SSA that there is no disability. 29 U.S.C. § 1162(2)(E). However, this provision is unlikely to be invoked since final determinations generally take longer than 29 months.

The former employee or other beneficiary, on the other hand, has an obligation to meet all the notice requirements set out above and pay all premiums in full and on time, or risk losing COBRA coverage. 29 U.S.C. § 1162(2)(C). If the employer does not subsidize COBRA premiums, the employee may qualify for a reduction in premium to 35% of the group plan rate if the qualifying event is an involuntary job loss between September 1, 2008 and December 31, 2009. American Recovery and Reinvestment Act, Pub. L. No. 111-5, § 3001, 123 Stat. 115, 456-67 (2009).

### Conclusion

COBRA can provide valuable protection in the precarious world we are in today. Losing a job due to a disability or any other reason does not mean losing health insurance. However, it is important that employers, insurers, and employees all know their obligations under COBRA so that it provides the safety net for such vulnerable people that was intended by the law.

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<sup>1</sup>However, if the beneficiary joined Medicare within 18 months prior to the qualifying event, COBRA coverage must be extended to 36 months. 29 U.S.C. § 1162(2)(A)(vii).

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### DAVID VEAZEY

David Veazey received his law degree in 2009 from University of Tennessee College of Law with a certificate from UT's prestigious Center for Entrepreneurial Law. He began working for Eric Buchanan & Associates as a law clerk in 2008 while in law school.

While in law school, David worked for the UT Legal Clinic, advising non-profit organizations on legal issues. He served on the executive board of UT Law Women to help promote opportunities for women in the legal profession. David was also a member of the Tennessee Law Review and the American Inns of Court.

Prior to law school, David spent four years in Moscow, Russia, working as Senior Adviser to AIDS Foundation East-West, dedicated to fighting the HIV/AIDS epidemic in the countries of the former Soviet Union. He had previously worked for Nobel Peace Prize recipient, Doctors Without Borders, in New York, helping ensure that people in less-developed countries have access to essential medicines.

David graduated with a B.A. from St. John's College's Great Books program in Annapolis, Maryland, in 1997. In 2002 he was awarded an M.A. in Economics from Fordham University in New York, where he was a Presidential Fellow and a member of the Omicron Delta Epsilon International Honor Society in Economics. He is a native Chattanooga and was a member of the third graduating class of Chattanooga School for the Arts & Sciences in 1993.

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**ERIC BUCHANAN & ASSOCIATES, PLLC UPCOMING ARTICLES**

The Social Security Administration Has Created a New Malpractice Trap for Attorneys Who Handle Workers' Compensation Cases - By: Eric Buchanan - Published in TTLA 2009

ERISA Subrogation and Recoveries - By: Eric Buchanan - A new chapter to be added to the upcoming addition of Thomson West's Auto Tort Litigation Manual

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**ERIC BUCHANAN & ASSOCIATES, PLLC UPCOMING CLE SPEAKING ENGAGEMENTS**

Eric Buchanan will be speaking at the Tennessee Association for Justice Annual Review & Ethics Seminar on Subrogation claims in Chattanooga, TN November 19, 2009.

Eric Buchanan will be speaking at the Tennessee Association for Justice Seminar on ERISA and Subrogation claims in Johnson City, TN on December 11, 2009.

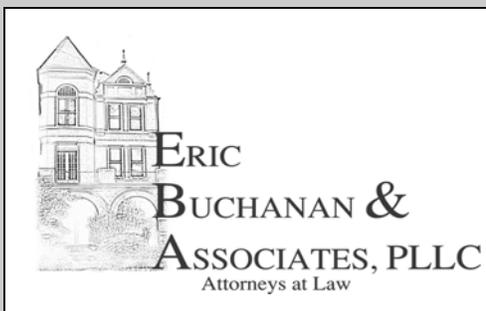
Eric Buchanan will be speaking at the Tennessee Association for Justice Annual Review & Ethics Seminar on Subrogation claims in Nashville, TN December 17, 2009.

Eric Buchanan will be speaking at the NOSSCR Social Security Disability Spring Conference on ERISA LTD claims to be held in New Orleans, LA May 12-15, 2010.

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**NEED A SPEAKER?**

The attorneys at Eric Buchanan & Associates are available to speak to your organization regarding Social Security Disability, ERISA Long-term Disability, Group Long-term Disability, Private Disability Insurance, ERISA Benefits, Denied Health Insurance Claims and Life Insurance Claims. Contact Molina Haynes, Office Manager at (423) 634-2506 or via email at [mhaynes@buchanandisability.com](mailto:mhaynes@buchanandisability.com)



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## Denied disability benefits? Call Eric's Team.

Eric Buchanan, Scott Wilson & Seth Holliday are certified as

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\*by the Tennessee Commission on Continuing Legal Education and Specialization

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