



EMPLOYMENT ALERT

JANUARY 2010

Effective Immediately: COBRA Subsidy Extension

On December 19, 2009, President Obama signed a law¹ (the “Act”) extending the COBRA subsidy that went into effect as part of the American Recovery and Reinvestment Act of 2009 (the “Stimulus Plan”). The COBRA subsidy under the Act has several significant changes. The Act:

- extends the total allowable time an individual can receive the COBRA subsidy by six months (from nine to 15 months); and
- extends the subsidy to individuals who are involuntarily terminated between January 1, 2010, and February 28, 2010.

The Act also allows certain individuals whose subsidy periods have already expired and who failed to pay their full unsubsidized premiums to retroactively pay them. The amount of the subsidy remains at 65%.

Eligibility Period

Under the Stimulus Plan, employees that were involuntarily terminated between September 1, 2008 and December 31, 2009 AND lost coverage as a result of that termination were eligible for the COBRA subsidy.

Under the Act, employees that are involuntarily terminated between September 1, 2008 and February 28, 2010 are eligible for the COBRA subsidy.

In other words, only the termination from employment, not the loss of coverage, must occur on or before February 28, 2010 to receive the subsidy. For example, if an employee is involuntarily terminated on February 2, 2010 and his or her coverage extends through March 2010, the individual is still eligible for the COBRA subsidy under the Act.

Subsidy Period

The Act extends the duration of the subsidy by six months. Under the Stimulus Plan, an individual could receive the COBRA subsidy for up to nine months. Under the Act, an individual can now receive the COBRA subsidy for up to 15 months.

The Subsidy is Retroactive

The subsidy extension is retroactive. An individual who dropped their COBRA coverage when the Stimulus Plan COBRA subsidy expired must be given the opportunity to regain subsidized COBRA coverage by paying COBRA premiums retroactively. Employers must now treat these individuals as eligible for the extended period of COBRA coverage if they pay the reduced premium amount for the entire period since the lapse of their COBRA coverage by February 17, 2010 or, if later, 30 days after they receive proper notice of their new rights under the law.

Individuals who continued to pay full COBRA premiums for coverage following the lapse of the Stimulus Plan subsidy are entitled to reimbursement for their payment of the 65% subsidy. Employers must either make a reimbursement payment equal to the excess



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portion paid or credit that amount toward future premiums payable, provided that it is reasonable to believe that the credit will be used within 180 days.

Notice Requirements

First, an individual who was eligible for the COBRA subsidy under the Stimulus Plan on or after October 31, 2009 must be provided a notice with information regarding the subsidy extension no later than February 17, 2010.

Second, individuals who were eligible for the COBRA subsidy under the Stimulus Plan must be provided notice of (a) their right to pay retroactive premiums to reinstate coverage and (b) their right to reimbursement for overpayment. This notice must be given to individuals who are in their “transition period.” This is the period that begins immediately after the end of the nine-month Stimulus Plan COBRA subsidy period. This second notice must be provided within the first 60 days of the individual’s transition period.

The Department of Labor intends to issue model notices for both types of notification in early 2010.

What to Do Now?

The COBRA subsidy extension is effective immediately. At a minimum, employers must identify all individuals affected by the new law and amend and distribute revised COBRA subsidy notices that comply with the new law’s requirements.

Also, look out for another extension of the COBRA subsidy in 2010. The House of Representatives recently passed the Jobs Act which would extend the COBRA subsidy through June 30, 2010. The Senate is expected to review the Jobs Act in early 2010.

For more information on how we can help you comply with this new law, please contact:

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¹Department of Defense Appropriations Act for Fiscal Year 2010