

January 15, 2010

## **Department of Defense Appropriations Act: New Law Extends COBRA Premium Subsidy**

On December 19, 2009, President Obama signed into law the Department of Defense Appropriations Act, 2010 (the "Act"), which extends the eligibility and coverage period for the COBRA premium subsidy. The COBRA premium subsidy was originally established pursuant to the American Recovery Reinvestment Act of 2009 ("ARRA"), subsidizing 65 percent of eligible employees' COBRA premiums. The premium reduction is reimbursable to the employer, insurer, or health plan as a credit against certain employment taxes. Under ARRA, individuals were only eligible to receive the subsidy if their employment and group health insurance coverage was involuntarily terminated between September 1, 2008 and December 31, 2009. Under the new legislation, however, the deadline for eligibility has now been extended until February 28, 2010, making individuals who are involuntarily terminated from employment during those additional two months eligible for the subsidy as well.

Further, the premium reduction previously applied to periods of health coverage that began on or after February 17, 2009 and lasted for up to only nine months. The Act has now extended that premium reduction period to up to 15 months. Accordingly, under the Act, the premium assistance will end 15 months after the individual's period of premium reduction coverage begins, unless the individual's COBRA coverage terminates earlier because the individual obtains

other health coverage or because the maximum COBRA period expires.

In addition, under the Act, for individuals whose subsidy expired before the new law was enacted and subsequently paid 100% of their COBRA premium, they may be eligible to receive retroactive subsidized coverage in the form of a future credit or a reimbursement of the overpayment. Moreover, individuals who reached the end of the nine month premium reduction period before the Act became effective, but stopped paying for their COBRA coverage, will now receive an extension of their grace period to pay the reduced premium. (Generally, under COBRA, premiums for successive periods of coverage are due on the date stated in the plan with a minimum 30-day grace period for payments.) To continue their coverage they must pay 35 percent of their premium costs by February 17, 2010, or, if later, 30 days after notice of the extension is provided by their plan administrator (see new notice requirements below).

As part of the COBRA election notice, plan administrators must provide information about the premium reduction to all individuals who were involuntarily terminated between September 1, 2008 and February 28, 2010. If COBRA election notices were previously distributed, plan administrators must provide an additional notice about the

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changes made to the premium reduction provisions by the Act.

The notice must be sent to individuals who, on or after October 31, 2009, were either an "assistance eligible employee" (an individual who was involuntarily terminated on September 1, 2008 through February 28, 2010), or who experienced a COBRA qualifying event (voluntary or involuntary termination of employment) relating to COBRA continuation coverage. The notice must generally be sent by February 17, 2010 (within 60 days of the enactment of the Act), unless a qualifying event occurred *after* December 19, 2009 (the date of the Act's enactment). If the qualifying event occurred after December 19, 2009, notice must be sent in accordance with the normal timeframes for providing COBRA continuation coverage notification.

Individuals who are in a "transition period" (individuals whose nine month premium reduction period expired before the new law was enacted) must be provided notice within 60 days *of the first day of the transition period* (which is the first day after their nine month premium reduction period ended). The notice provided to these particular individuals must inform them of their right to pay a reduced premium and the right to receive a reimbursement or future credit in the event that they paid their full COBRA premium after their subsidy expired.

According to the Act, model notices will be issued by January 19, 2010.

Finally, employers are reminded that, in the summer of 2009, the New York State's law regarding health insurance coverage continuation was also amended to extend New York's health continuation coverage period.

If you need further advice on this matter, please contact [Rebecca Fischer](#) at (212) 758-7793.

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