

ALERT

COBRA SUBSIDY EXTENDED. IMMEDIATE ACTION IS REQUIRED (AGAIN).

January 6, 2010

Congress has extended the COBRA premium subsidy and has made changes to the “old” rules. (For more information on the COBRA premium subsidy, see our Alert and accompanying Client Memorandum dated March 6, 2009). If you or someone you know lost their job over the past year and has been receiving subsidized COBRA coverage, this is not a bad Christmas gift. But your feelings are likely to be somewhat different if you are responsible for your company’s COBRA compliance.

Here’s what’s new or different:

- (1) **February 28, 2010 – New Deadline for Qualifying for the Subsidy.** Under the American Recovery and Reinvestment Act of 2009 (“ARRA”) – which may be better known as the “Economic Stimulus Bill” from February 2009 – the COBRA premium subsidy was not available unless an employee was involuntarily terminated by December 31, 2009 (among other conditions). This deadline has now been extended until February 28, 2010. This means that more individuals will qualify for the subsidy.
- (2) **Extended Deadline for Starting COBRA Coverage.** Under ARRA, if an employee was involuntarily terminated, the employee and his/her dependents had to start their COBRA coverage no later than December 31, 2009, in order to qualify for the subsidy. This was a problem for employees who were terminated in December because their coverage, under many group health plans, would have continued through the end of the month and COBRA coverage would not have started until the next month (i.e., past the December 31 deadline). Under the new rules, however, an employee and his/her dependents will qualify for the subsidy as long the employee is “involuntarily terminated” by February 28, 2010, even if the COBRA coverage does not begin until March 2010 or later.
- (3) **Fifteen Months – The New Maximum Duration of the Subsidy.** Under the “old” rules, an “assistance eligible individual” (i.e., an employee who is receiving a COBRA premium subsidy under ARRA after having been involuntarily terminated, or a dependent of the employee who is receiving a COBRA premium subsidy because of the employee’s involuntary termination) could receive the COBRA premium subsidy for a maximum of nine months (although the occurrence of other events, such as becoming eligible for other coverage, could cause the individual to lose the subsidy before the end of the nine-month period). Under the new law, the maximum duration for the subsidy has increased to fifteen months. This change applies to anyone who has been receiving the subsidy or who will be receiving the subsidy in the future.
- (4) **Another “Second Chance” to Elect COBRA.** If an “assistance eligible individual” dropped his/her COBRA coverage after receiving the subsidy for the old maximum period of nine months, he/she must be informed that the maximum subsidy period has been extended to fifteen months and must be given a second chance to elect COBRA. This change potentially affects individuals who dropped their COBRA coverage at the end of November or December 2009, following the expiration of their old maximum subsidy period.

To comply with the new law, employers will need to do the following:

- (1) **Update COBRA Election Forms.** When coverage would otherwise be lost as a result of a “qualifying event,” such as a divorce or termination of employment, the “plan administrator” must provide a COBRA election form to the individuals who would otherwise lose their coverage. (These individuals are referred to as “qualified beneficiaries”.) Under ARRA, information about the COBRA premium subsidy must be

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provided with the COBRA election form. Because this information has changed – the subsidy is now available for up to fifteen months and the deadline for qualifying for the subsidy has been extended to February 28, 2010 – the ARRA information that is provided with this COBRA election form will need to be revised and updated.

(2) **Notify Existing “Assistance Eligible Individuals” and “Qualified Beneficiaries” of the New Law.** Information about the changes made by the new law must be provided to the following individuals:

(a) **“Assistance Eligible Individuals” On or After October 31, 2009.** Anyone who is (or was) an “assistance eligible individual” at any time on or after October 31, 2009. For most plans, this will include anyone who received the COBRA premium subsidy during October, November, or December 2009.

(b) **“Qualified Beneficiaries” Due to Termination of Employment On or After October 31, 2009.** Anyone who became entitled to elect COBRA coverage as a result of an individual’s termination of employment if the employment was terminated on or after October 31, 2009. *This requirement applies regardless of whether the employee voluntarily resigned or was involuntarily terminated.* It includes not only the employee, but also any dependents of the employee, such as the employee’s spouse and/or dependent children, who were receiving coverage through the employee.

For most individuals affected by these new rules, the required notice will need to be provided no later than February 17, 2010. However, for those individuals who do not experience a qualifying event until after December 19, 2009, the plan may provide the required notice within the normal time frame for providing COBRA election forms to qualified beneficiaries.

(3) **Identify and Determine the New Subsidy Entitlements of Individuals Who Elected COBRA Coverage But Have Reached the End of their Nine-Month Maximum Subsidy Period.** Individuals who elected COBRA coverage and have reached the end of the original nine-month maximum subsidy period need to be identified. Because most group health plans offer coverage in one-month units, the first month in which the subsidy was available for most plans was March 2009. This means that, for most plans, the earliest date on which an “assistance eligible individual” could have reached the end of the ninth-month maximum subsidy period was the end of November 2009. So, for most plans, identifying these individuals should (hopefully) not be too hard. What happens next depends on whether or not these individuals still have coverage in place:

(a) **Still Covered Under COBRA.** If individuals have continued paying their full premiums following the expiration of their maximum subsidy period so that their COBRA coverage is still in place, the plan will need to give them either a refund or a credit against future premiums. The amount of the refund/subsidy will be equal to the amount of the subsidy for which they were eligible, under the revised law, in the month(s) in which they paid the full COBRA premium.

(b) **No Longer Covered Under COBRA.** If individuals dropped their COBRA coverage after reaching the end of the nine-month maximum subsidy period, the plan will need to give them a second opportunity to elect COBRA. If the individuals take advantage of this opportunity, coverage will be reinstated retroactively to when it was dropped and they will have to pay their share of the premium for that retroactive coverage. The deadline for paying the premium is the later of (i) February 17, 2010, or (ii) 30 days after the plan administrator notifies them of the new COBRA premium subsidy rules.

This represents a very brief and simple summary of some very complicated statutory provisions. *If you previously engaged our firm to prepare a “COBRA Premium Subsidy Package” reflecting the original COBRA premium subsidy provisions found in ARRA, we will be contacting you in the very near future regarding the steps that need to be taken to comply with the new COBRA premium subsidy provisions.* If you have questions regarding the COBRA provisions in the Economic Stimulus Bill or the December 2009 changes that Congress has made to those rules, please feel free to call Steven Smith or Ruhe Rutter at 316-267-2000.