

LEGAL UPDATES

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## COBRA Subsidy Extension

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On December 19, 2009, President Obama signed the Department of Defense Appropriations Act for Fiscal Year 2010 (the Defense Act), extending the COBRA subsidy originally provided for in the American Recovery and Reinvestment Act of 2009 (ARRA).

The Defense Act extended the COBRA subsidy period from nine months to 15 months and extended the subsidy eligibility period for assistance eligible individuals (AEIs) through February 28, 2010. In addition, the Defense Act eliminated the prior requirement that both termination and COBRA eligibility occur during the subsidy eligibility period. Consequently, AEIs who are involuntarily terminated on or before February 28, 2010, are eligible for the subsidy even if loss of coverage does not occur until after February 28, 2010.

The Defense Act does not increase the amount of the subsidy nor does it modify how employers are reimbursed.

The Defense Act provides that AEIs who lost COBRA coverage because of failure to pay premiums when the nine-month COBRA subsidy period ended may elect to retroactively pay premiums on a subsidized basis. Such retroactive premiums must be paid by the later of February 17, 2010, or 30 days following the date on which the AEI is provided notification of his or her COBRA subsidy extension rights. If an AEI continued COBRA coverage on an unsubsidized basis after the nine-month COBRA subsidy period ended, the employer must either refund the subsidy amount or apply a credit of such amount toward future premiums.

The Defense Act requires group health plans to notify certain individuals of the Defense Act COBRA subsidy extension. The Department of Labor (DOL) released model notices on January 13, 2010.

An updated General Notice should be provided in accordance with general COBRA notification requirements to individuals who experienced any type of

qualifying event from September 1, 2008, through February 28, 2010, and who have not yet been provided a COBRA election notice.

A Premium Assistance Extension Notice should be provided as follows:

By February 17, 2010, to individuals who were AEIs on October 31, 2009, and whose nine-month COBRA subsidy period had not ended on October 31, 2009;

By February 17, 2010, to individuals whose qualifying event was a termination of employment on or after October 31, 2009, and who received a COBRA notice that did not include information about the Defense Act subsidy extension;

By the 60th day after the date the nine-month COBRA subsidy period ended, to AEIs whose nine-month COBRA subsidy period has ended, but who are entitled to the COBRA subsidy due to the extension and who otherwise remain eligible for the subsidy.

An updated Alternative Notice should be provided to individuals who become eligible for continuation coverage under state law.

Regardless of the deadlines for providing the notices set forth above, due to the nature of the retroactive premium payment and overpayment rights associated with the extension of the COBRA subsidy period, notices should be provided as soon as possible.

A plan administrator that modified the prior COBRA subsidy model notices may want to modify the updated notices in a similar manner. Simplifying the model notices may be desirable to avoid employee confusion. The model Premium Assistance Extension Notice does not address overpayment situations. Consequently, a plan may want to modify that notice to include an explanation regarding AEIs who continued COBRA coverage on a non-subsidized basis after their nine-month COBRA subsidy period ended.

Congress is currently considering legislation that would extend eligibility for the COBRA subsidy through June 30, 2010, and make other minor changes. We are tracking that legislation and will provide updated information if additional legislation is enacted.

### **What This Means to You**

The COBRA subsidy period has been extended from nine to 15 months and the eligibility period extended to include terminations on or before February 28, 2010. Pending legislation may result in additional changes. Sponsors of group health plans are advised to modify administration of the

COBRA subsidy and provide notices as soon as possible to avoid compliance issues associated with the COBRA subsidy extension changes described above.

### **Contact Info**

If you have any questions about this or any other employee benefits and executive compensation matter, please contact your Husch Blackwell Sanders attorney.

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