

COBRA Subsidy Extended

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The Defense Appropriations Act (the Act), signed by the President on December 21, 2009, extends the COBRA subsidy in two significant ways.

- Originally, eligibility for the COBRA subsidy was limited to employees who experience an involuntary termination of employment and loss of group health coverage between September 1, 2008 and *December 31, 2009*. Under the Act, the COBRA subsidy will be available to employees who experience an involuntary termination of employment between September 1, 2008 and February 28, 2010, regardless of when their COBRA period starts.
- The COBRA subsidy was originally limited to nine months such that the COBRA subsidy ended November 30, 2009 for assistance eligible individuals (AEIs) who have been on COBRA since March 1, 2009. Under the Act, the maximum period of subsidized COBRA coverage has been extended from nine months to 15 months, providing an additional six months of the COBRA subsidy.

The changes present challenging transitional issues for employers.

- AEIs who did not pay the December COBRA premium may retroactively elect to resume subsidized COBRA coverage. It appears that employers are required to send a notice to these

AEIs by January 30, 2010. To resume COBRA coverage, the AEIs must pay the subsidized December COBRA premium within 30 days of the notice or, if later, by February 19, 2010.

- If an AEI paid the full (unsubsidized) COBRA premium for December and/or January, the employer must refund the excess or apply the excess to future COBRA premiums.
- Employers also need to send updated COBRA notices to individuals who become eligible for COBRA due to a termination of employment on or after October 31, 2009.

The Department of Labor (DOL) is expected to provide guidance on the new notice obligations. You can subscribe at www.dol.gov/cobra to receive e-mails when new DOL guidance is posted.

Some aspects of the COBRA subsidy were not changed. The amount of the COBRA subsidy remains at 65% of the COBRA premium, and the COBRA subsidy continues to be unavailable to employees who lose group health coverage due to a reduction in hours or any COBRA qualifying event other than an involuntary termination.

It is possible that Congress will consider an additional extension of the COBRA subsidy next year. We are monitoring developments and will keep you posted.

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