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# Employers Need to Know™

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## COBRA Subsidy Extension

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On December 21, 2009, President Obama signed the 2010 Defense Appropriations Act extending the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) subsidy originally enacted in February 2009 by the American Recovery and Reinvestment Act of 2009 (ARRA).

As employers know under COBRA, eligible, terminated employees, employed at businesses with 20 or more employees, are entitled to at least 18 months of health coverage under their employer's group health plan. Before passage of ARRA, employees were responsible for up to 102% of the cost of premiums associated with such a plan. Under ARRA, employees that are involuntarily terminated and lose employer based healthcare coverage between September 1, 2008 and December 31, 2009 (other than for gross misconduct) are responsible for only 35% of the cost of premiums for nine months. Employers are responsible for the remaining 65%, but receive a refundable payroll tax credit for the cost. The new law extends the cut-off date by two months to cover those involuntarily terminated on or before February 28, 2010. Further, the extension requires only that an individual be involuntarily terminated before the end of February, not that they also lose employer coverage by a certain time, as did ARRA. For example, an individual involuntarily terminated on February 1, 2009, but with employer provided coverage through March 1, 2010, is eligible for the COBRA subsidy on March 2, 2010.

Previously, under ARRA, subsidized coverage was available for only nine months. Under the extension, COBRA subsidized coverage is extended to fifteen months, though coverage still ends sooner if the individual begins coverage under another group health plan (excluding those plans with vision or dental coverage only), a flexible spending plan, or an on-site medical treatment plan, or if the employee becomes eligible for Medicare. Individuals who exhausted their nine months of subsidized coverage under ARRA and were forced to cancel COBRA coverage due to price can opt to resume subsidized coverage for another six months and reinstate coverage retroactively to the date it was lost. Similarly, those who continued COBRA coverage at full price can resume subsidized coverage, and receive premium credits or refunds from their employer to reimburse for the increased premium paid.

Employers have 60 days to notify individuals, who on or after October 31, 2009 were eligible for COBRA subsidization or who are involuntarily terminated after enactment, of the extension. The Department of Labor is expected to release a model notice.

For compliance assistance please contact any member of the Ober|Kaler [Employment & Labor Group](#).

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