



Legal Alert: President Extends COBRA Subsidy Under New Department of Defense Appropriations Act

12/21/2009

On December 21, 2009, President Obama signed legislation extending the COBRA premium subsidy originally established under the American Recovery and Reinvestment Act of 2009 ("ARRA"). Under the ARRA, only individuals who were involuntarily terminated and who lost group health insurance coverage before December 31, 2009 were eligible to receive the subsidy. Moreover, the subsidy was only available for nine months of coverage.

The new legislation extends federal COBRA health coverage cost subsidies for 6 additional months for a total of 15 months of subsidized coverage. The extension applies to those COBRA beneficiaries whose nine-month premium subsidy under the ARRA had expired. The legislation also extends the qualifying event deadline to February 28, 2010. The legislation actually amends the ARRA provisions that required terminated employees to have been eligible for COBRA coverage by December 31, 2009, and now clearly says that the terminated employee only must have been terminated by December 31, 2009, even if COBRA eligibility isn't effective until some time in 2010. Although the December 31, 2009 deadline has been amended, the result is the same: come February 28, 2010, the employees need not actually be COBRA-eligible, they just have to have been involuntarily terminated by that date.

In addition, the legislation gives beneficiaries whose subsidy expired and who didn't continue to pay the full unsubsidized premium the opportunity to receive retroactive subsidized coverage. For example, a beneficiary whose nine months of subsidized coverage ran out November 30, 2009 and who didn't pay the unsubsidized premium for December 2009 now has the option to pay his or her 35 percent share of December's premium in January 2010 and, upon doing so, would receive COBRA coverage for December.

This legislation requires employers to notify current and future COBRA beneficiaries of the new 15-month premium subsidy. Additionally, it permits employers to offset future COBRA premiums or issue refund checks for beneficiaries who "overpaid" their COBRA premiums by paying unsubsidized premiums but who are now eligible for retroactive subsidized coverage.

The entire text of the legislation, including instructions for retroactive payment of premiums and notification requirements, is contained in Section 1010 of the Department of Defense Appropriations Act 2010, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3326enr.txt.pdf.

The Bottom Line

Employers and plan administrators should notify current and future COBRA beneficiaries of the new 15-month premium subsidy, and current COBRA beneficiaries of their right to extend receipt of the subsidy. Employers should also contact their payroll administrators to determine the easiest way to offset future COBRA premiums or issue refund checks to beneficiaries that overpaid their premiums.

If you have any questions regarding the issues addressed in this Alert, please contact the author, Lindsay O'Brien, lobrien@fordharrison.com, 904-357-2005 or any member of Ford & Harrison's Employee Benefits practice group.