

## Congress Extends COBRA Premium Subsidy Again . . .

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Here we go again. The COBRA premium subsidy has been extended again — this time under the Temporary Extension Act of 2010 (TEA), signed into law by President Obama on March 2, 2010. Under the extension, employees (and their families) who lose group health plan coverage because of involuntary termination of employment during March of 2010 will be entitled to a subsidy of their COBRA premium for up to 15 months. Eligible individuals pay only 35% of their COBRA premiums and the remaining 65% is reimbursed to the employer through a tax credit.

### **One Month Extension of Eligibility Period**

Before the extension, the involuntary termination of employment had to occur between September 1, 2008, and February 28, 2010. The new law extends the eligibility period through March 31, 2010. But, Congress is still working on another bill that could further extend the eligibility period through the end of 2010. (We can feel your pain as you contemplate yet another round of notices and special enrollment rights.)

### **New Class of Individuals Eligible for Subsidy**

TEA also creates a new eligibility class: Individuals who lost employer-sponsored group health plan coverage because of a reduction in hours occurring between September 1, 2008 and March 31, 2010, followed by an involuntary termination of employment on or after March 2, 2010. These individuals now have a second COBRA election period, regardless of whether they previously declined or elected and then discontinued COBRA coverage when they initially lost group health plan coverage following the reduction in hours.

Employers must provide individuals in this new class with a notification of their new rights within 60 days of their involuntary termination. Upon receiving notice, the individual may elect subsidized COBRA coverage, with such coverage starting on the date of involuntary termination. (The period of COBRA coverage, however, will be measured from the date of the reduction in hours rather than the date of involuntary termination.) The premium must be paid by the latest of: (1) May 1, 2010, (2) 30 days from the receipt of the notice, or (3) the end of the COBRA premium payment grace period that would otherwise apply.

### **Additional Enforcement Mechanisms**

TEA also adds some additional enforcement mechanisms. In any case where an individual requests but is denied the COBRA subsidy, the individual has a right to file an appeal of that denial with the Secretary of the appropriate agency (Department of Labor or Department of Health and Human Services). The agency must make a determination within 15 business days after it receives the appeal. Under prior law, the agency's ability to enforce a determination was limited. Under TEA, the appropriate agency and the aggrieved individual now have the right to bring a civil action in court to enforce the determination. In addition, the appropriate agency may assess a penalty of up to \$110 per day for each failure to comply with a determination after 10 days of the employer receiving it.

### **Questions**

We expect guidance from the Department of Labor shortly and will pass on more details as they become available. In the meantime, if you have any questions, please contact Norbert F. Kugele ([nkugele@wnj.com](mailto:nkugele@wnj.com), or by phone at 616.752.2186), Lisa Zimmer ([lzimmer@wnj.com](mailto:lzimmer@wnj.com), or by phone at 248.784.5191), or any other member of Warner's Employee Benefits Practice Group.