



## Legal Alert: Third Extension of COBRA Premium Subsidy Extends Availability Through May 31, 2010

4/23/2010

Extended now for the third time<sup>[1]</sup>, the availability of the COBRA premium subsidy has been extended through May 31, 2010. Late on April 15, 2010, President Obama signed H.R. 4851, the Continuing Extension Act of 2010. Final passage in the House of Representatives (votes 289-112) and in the Senate (votes 59-38) ensured that several government programs would be extended, including the COBRA premium subsidy.

Under the Continuing Extension Act, the eligibility period for the 65% COBRA premium subsidy is available to individuals that are involuntarily terminated from employment through May 31, 2010. The bill also provides transition relief for individuals who lost their jobs between March 31, 2010 and the date of enactment. Specifically, the Act provides that individuals who were involuntarily terminated between April 1, 2010 and April 15, 2010 are also eligible to receive the subsidy. Therefore, a group health plan must extend a COBRA special election period to any individual who experienced an involuntary termination of employment between April 1, 2010 and April 15, 2010. The special election period begins on April 15, 2010, and ends 60 days after the date that the Notice of Special Election Period is provided to the Assistance Eligible Individual.

As far as the Notice of Special Election Period that should be distributed to the individuals terminated between April 1, 2010 and April 15, 2010, a plan administrator must provide the general COBRA Notice, including a statement of the availability of the premium reduction for individuals that are involuntarily terminated from employment through May 31, 2010, within 60 days of enactment of the Act (by June 14, 2010). If the plan administrator has already distributed the general COBRA Notice to these individuals, then the plan administrator may simply send a supplemental notice notifying these individuals that the premium subsidy will now be available to individuals involuntarily terminated through May 31, 2010, and that they are eligible for the special election period.

### THE BOTTOM LINE

It is unclear at this point in time whether Congress will consider a longer extension of the COBRA premium subsidy. There are currently two separate bills before Congress that each propose to further extend the COBRA subsidy eligibility period through June 30, 2010, or year end. In the meantime, employers and plan administrators should:

- Update COBRA Notices and group health plan communication materials to include information regarding the extension of the subsidy eligibility period through May 31, 2010.
- Monitor the Department of Labor website (<http://www.dol.gov>) for updated model COBRA notices. Employers and plan administrators can then tailor the updated model COBRA notices to meet the administrative procedures and other requirements of the group health plan.
- Identify all employees who were involuntarily terminated between April 1, 2010 and April 15, 2010. With respect to these individuals, provide an updated COBRA Notice notifying them of the extended eligibility period and their special election period **on or before June 14, 2010**.

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

[1] As background information, the COBRA premium subsidy was first established as part of the American Recovery and Reinvestment Act of 2009 (the "ARRA") to provide nine months of premium assistance for COBRA and state health continuation coverage to individuals who were involuntarily terminated from employment and, as a result, lost group health coverage between September 1, 2008 and December 31, 2009. Our Legal Alert regarding the basic provisions of the ARRA can be viewed by following this link: <http://www.fordharrison.com/shownews.aspx?show=4526>. The Department of Defense Appropriations Act then extended the maximum subsidy period from 9 months to 15 months, and extended the eligibility period of the subsidy through February 28, 2010. Our Legal Alert regarding the Department of Defense Act can be viewed by following this link: <http://www.fordharrison.com/shownews.aspx?show=5718>. Signed on March 2, 2010, the Temporary Extension Act of 2010 extended the COBRA subsidy through March 31, 2010. Our Legal Alert entitled "COBRA Subsidy Extended Through March 31, 2010" can be viewed by following this link: <http://www.fordharrison.com/shownews.aspx?show=5899>.