

ALERTS AND UPDATES

COBRA Subsidy Extended Once Again

March 4, 2010

By signing the Temporary Extension Act of 2010 (the "Act") into law on March 2, 2010, President Obama has once again extended the eligibility period for the COBRA premium subsidy.

As we reported in our previous *Alert*, "[COBRA Premium Subsidy Extended](#)," the 65-percent COBRA premium subsidy was previously extended through February 28, 2010. The Act once again extends this eligibility period for an additional month, now through March 31, 2010. In light of the Act, the definition of "assistance eligible individual" now covers a qualified beneficiary who was involuntarily terminated during the period from September 1, 2008, through March 31, 2010, and who elects the COBRA continuation coverage. However, the Act did not change the maximum period for receiving the subsidy, which remains at 15 months.

In addition, the Act contains a significant change in regard to COBRA continuation coverage resulting from a reduction in hours. An "assistance eligible individual" now includes a qualified beneficiary if the initial qualifying event with respect to the COBRA continuation coverage consists of a reduction in hours (during the period from September 1, 2008, through March 31, 2010), and such qualifying event is followed by an involuntary termination of employment (during the period from March 2, 2010, through March 31, 2010). The Act adds this concept of a reduction in hours followed by an involuntary termination of employment in order to become an assistance eligible individual, while the law previously provided that only an individual who became eligible for COBRA continuation coverage as a result of an involuntary termination of employment was potentially eligible for the COBRA premium subsidy.

The Act also includes the following specific provisions regarding individuals who previously lost coverage due to a reduction in hours:

- In the case of an individual who did not make (or who made and discontinued) an election of COBRA continuation coverage on the basis of a reduction in hours of employment, the involuntary termination of employment of such individual on or after March 2, 2010, shall be treated as a qualifying event.
- The period of such individual's COBRA continuation coverage shall be determined as though the qualifying event were the reduction in hours of employment, not the involuntary termination of employment.

- For such individuals, the group-health-plan administrator shall then provide, during the 60-day period beginning on the date of the such individual's involuntary termination of employment, an additional COBRA notification.

However, it is important to note that these provisions are only applicable to those who are assistance eligible individuals on the basis of a qualifying event consisting of a reduction in hours occurring after September 1, 2008, followed by an involuntary termination, provided that such involuntary termination of employment occurs on or after March 2, 2010, and before March 31, 2010.

Therefore, individuals who became eligible for COBRA—but not the COBRA subsidy—due to a reduction in hours on or after September 1, 2008, will become eligible for the COBRA subsidy if they are involuntarily terminated between March 2, 2010, and March 31, 2010. However, the period of continuation coverage will relate only to the date of the reduction in hours, not to the date of the involuntary termination.

The Act adds another layer to the issue of administering the COBRA premium subsidy. In particular, the Act's provisions regarding individuals who previously experienced a reduction in hours, but who then experience an involuntary termination of employment, may create confusion for employers and plan administrators. The additional notice requirements and the appropriate dates for purposes of continuation coverage should be followed. While Department of Labor guidance regarding the notice requirements is anticipated, Duane Morris is available to assist employers and plan administrators in fulfilling their obligations under the Act.

Duane Morris will continue to monitor this topic and provide updated *Alerts* accordingly.

For Further Information

If you have any questions about this *Alert*, please contact any of the [attorneys](#) in our [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.