

Employee Benefits and Executive Compensation Alert: COBRA Subsidy Extended

12/22/2009

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA makes COBRA continuation coverage more affordable and accessible to terminated workers by offering a 65% COBRA premium subsidy for up to nine months for workers involuntarily terminated between September 1, 2008, and December 31, 2009 and who elect COBRA.

As part of the 2010 Defense Appropriations Act (the “Act”), signed into law December 19, 2009, the ARRA COBRA subsidy has been extended in two key ways:

- The subsidy is now available for up to 15 months (a six-month extension from the original nine-month maximum coverage period).
- The subsidy is available for workers involuntarily terminated who lose health and dental coverage on or before February 28, 2010 who elect COBRA (under ARRA, coverage had to be lost on or before December 31, 2009).

Not all COBRA “qualified beneficiaries”¹ are entitled to take advantage of the subsidy. Rather, a qualified beneficiary is eligible if he or she is an “Assistance Eligible Individual” (AEI), defined as a COBRA qualified beneficiary who:

- Becomes eligible for COBRA, during the period beginning September 1, 2008 and ending February 28, 2010, due to the *involuntary termination of employment* of the covered employee
- Actually elects COBRA coverage.

The IRS has provided guidance on the types of events which may constitute an involuntary termination of employment, as discussed in our [earlier alert](#).

A “transition period” is established by the Act for an AEI with respect to any period of coverage beginning before December 19, 2009 to which the subsidy extension applies. An AEI will be considered to have timely paid a COBRA premium for a transition period if the AEI:

1. Had COBRA coverage for the period of coverage immediately prior to the transition period, and
2. Pays the premium by February 17, 2010 or, if later, within 30 days of receipt of the notice described below.

Any AEI who pays an unsubsidized COBRA premium during his or her transition period is entitled to either a reimbursement of the excess paid, or a credit towards future premiums.

Notice of the extension must be provided:

- By February 17, 2010 to any individual who was an AEI or otherwise experiences a qualifying event relating to termination of employment on or after October 31, 2009
- As part of the standard COBRA election package, to any individual who experiences a qualifying event after December 19, 2009
- To any individual who did not timely pay his or her COBRA premium during a transition period, disclosing the ability to pay retroactive COBRA premiums and continue coverage, within the first 60 days of such transition period
- To any AEI who paid an unsubsidized COBRA premium during a transition period, disclosing his or her entitlement to either a reimbursement of the excess paid, or a credit towards future premiums.

The Department of Labor has indicated that additional information and model notices will be available on its website.

ARRA's provisions are discussed in more detail in these earlier alerts:

- [Employee Benefits Alert: Economic Stimulus Law Expands and Subsidizes COBRA](#)
- [Employee Benefits Alert: COBRA Subsidy Update: Model Notices Available](#)
- [Employee Benefits Alert: IRS Issues New Guidance on COBRA Subsidy](#)

Endnotes

¹ COBRA "qualified beneficiaries" include employees as well as their spouses and dependent children.

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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