

Employment Law Monitor

INSIGHTS ON RECENT DEVELOPMENTS IN FEDERAL AND STATE LABOR & EMPLOYMENT MATTERS

PUBLISHED BY



ARRA COBRA Subsidy Set to End As of December 31, 2009

Posted at 9:57 AM on December 17, 2009 by Randi W. Kochman

As employers who have experienced employee terminations within the past fifteen (15) months are aware, the American Recovery & Reinvestment Act of 2009 (“ARRA”) provides a COBRA premium subsidy of 65% for qualified beneficiaries who suffer an “involuntary termination” between September 1, 2008 and December 31, 2009 and who are eligible for COBRA within the same time period and elect such continuation coverage. The question has arisen whether employees who are terminated in December 2009 and are set to begin COBRA on January 1, 2010 are eligible for this subsidy.

Pursuant to IRS and DOL guidance, the answer is no. In fact, “both the involuntary termination and eligibility for COBRA continuation coverage must occur during September 1, 2008 through December 31, 2009.” See IRS [Notice 2009-27,Q/A 13114](#). Because COBRA eligibility only begins after an individual ceases to be an active employee, an employee who ceases to be an employee in December 2009 and is first eligible to begin COBRA coverage on January 1, 2010 will not be entitled to the subsidy. See *Id.* Accordingly, if the employee and his/her dependents are covered through December 31, 2009, they will not technically become eligible for COBRA until January 2010 and, therefore, will fall outside the ARRA subsidy program. Employers should be clear on this guidance so that they may properly advise employees and not inadvertently promise anyone a subsidy in 2010.

Employers should also note that Congress is considering certain bills that might extend the COBRA premium subsidy to June 30, 2010. We intend to keep readers updated on the status of such proposed legislation in future blog posts.

Cole, Schotz, Meisel, Forman & Leonard, P.A.

Court Plaza North
25 Main Street
Hackensack, NJ 07601
Phone:
(201) 489-3000

900 Third Avenue
16th Floor
New York, NY 10022
Phone:
(212) 752-8000

500 Delaware Avenue
Suite 1410
Wilmington, DE 19801
Phone:
(302) 652-3131

300 East Lombard Street Suite 2000
Baltimore, MD 21202
Phone:
(410) 230-0660