

## **COBRA Subsidy Extended: Immediate Action Required**

Last year's American Recovery and Reinvestment Act of 2009 ("ARRA") offers involuntarily terminated workers (and their eligible family members) a 65% COBRA premium subsidy for up to nine months. The 2010 Defense Appropriations Act (the "Act"), signed into law December 19, 2009, extended the ARRA COBRA subsidy in three key ways:

- The subsidy is now available for up to fifteen months (six months longer than the original nine-month maximum);
- The subsidy is available if the employee is involuntarily terminated on or before February 28, 2010 (the previous deadline was December 31, 2009); and
- The subsidy is available if the termination of employment occurs on or before February 28, 2010, even if COBRA does not begin until after February 28, 2010.
  - For example, an employee who is involuntarily terminated on February 22, 2010, but whose COBRA coverage begins on March 1, would be eligible to receive the subsidy. We anticipate that the IRS and DOL will issue future guidance clarifying the scope of this rule, especially as applied to severance arrangements where COBRA may not begin for months after the termination.

As a reminder, only an Assistance Eligible Individual ("AEI") may claim the COBRA subsidy. In general, an AEI is a qualified beneficiary ("QB") who:

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

For further background on the COBRA subsidy, including the definition of an AEI, please refer to our earlier client alerts from [March](#) and [April](#) of 2009.

### **Employer Action Items:**

Because the Act adds new notification requirements, employers must once again send updated information to recent and future QBs. The Act gives employers sixty days (until February 17, 2010) to notify all AEIs and individuals who experienced a termination of employment of the new provisions. However, the Act requires notice to be provided **as early as January 29, 2010** for some individuals who are in a "transition period," as discussed in more detail below. The Department of Labor has issued model notices to assist employers in meeting the Act's compliance requirements. The notices are available at <http://www.dol.gov/ebsa/COBRAModelnotice.html>.

Based on the changes in the Act, employers should:

- Reinstate the reduced ARRA premium (35%) for any AEIs whose subsidy eligibility ran out in December or January;
- Refund or credit AEIs who paid the full COBRA premium in December, January or later months;
- Treat payment of the reduced ARRA premium (35%) as payment-in-full from current AEIs, including AEIs who experience a loss of coverage due to involuntary termination of employment on or before February 28, 2010; and

- Provide the updated ARRA-specific COBRA notices, available at the above link, as follows:
  - Employers should provide the **updated General Notice** to all QBs who have not yet been provided a COBRA notice.
  - Employers should provide the **updated General Notice** to all QBs who experienced a qualifying event of termination of employment in December or January but have not received the updated General Notice.
  - Employers must provide the **Premium Assistance Extension Notice** by February 17, 2010 to all QBs:
    - Who were AEIs as of October 31, 2009 (unless such person is in a “transition period,” as defined below); or
    - Who experienced a qualifying event of termination of employment on or after October 31, 2009 and lost health coverage (unless such individual was already provided a timely, updated General Notice).
  - Employers must provide the **Premium Assistance Extension Notice** to QBs who (a) are in a “transition period” and (b) were not provided with information regarding the extension of premium assistance within 60 days of the first day of the transition period.
    - An individual’s “transition period” is the period that begins immediately after the end of the maximum number of months (generally nine) of premium reduction available under ARRA prior to its amendment. An individual is in a transition period only if the premium reduction provisions would continue to apply due to the extension from nine to fifteen months.
    - Example: An AEI became eligible for the COBRA subsidy on March 1, 2009. His original COBRA subsidy period ended on November 30, 2009, meaning that his “transition period” began on December 1, 2009. The employer must provide the **Premium Assistance Extension Notice** within 60 days of the first day of the transition period, or **January 29, 2010**.

Our contact information is listed below if you have any questions about compliance with the Act.

### Employee Benefits Attorneys

Cathryn A. Conrad	<a href="#">View Resume</a>	<a href="mailto:cconrad@thompsoncoburn.com">cconrad@thompsoncoburn.com</a>
Paul G. Griesemer	<a href="#">View Resume</a>	<a href="mailto:pgriesemer@thompsoncoburn.com">pgriesemer@thompsoncoburn.com</a>
Leigh S. Gutting	<a href="#">View Resume</a>	<a href="mailto:lgutting@thompsoncoburn.com">lgutting@thompsoncoburn.com</a>
Lori W. Jones	<a href="#">View Resume</a>	<a href="mailto:ljones@thompsoncoburn.com">ljones@thompsoncoburn.com</a>
Michael D. Lane	<a href="#">View Resume</a>	<a href="mailto:mlane@thompsoncoburn.com">mlane@thompsoncoburn.com</a>
Ruth A. Streit	<a href="#">View Resume</a>	<a href="mailto:rstreit@thompsoncoburn.com">rstreit@thompsoncoburn.com</a>

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