

### The COBRA Premium Subsidy is Not Over!

While the rest of us were busy putting the final touches on our Christmas packages, on December 19, 2009, President Obama signed into law the Department of Defense Appropriations Act for Fiscal Year 2010 (“DDAA”). This law extends **both the eligibility period and the length** of the COBRA premium subsidy created by the American Recovery and Reinvestment Act of 2009 (“ARRA”). Specifically, the DDAA makes the following changes regarding this subsidy:

- extends the qualified individual eligibility period from December 31, 2009 to February 28, 2010
- increases the maximum period for receiving the 65% subsidy from 9 to 15 months
- provides that a COBRA-qualifying event (i.e., the termination of benefits) does not have to occur by February 28, 2010 – only the termination of employment must occur by this date in order for an individual employee to be eligible for the subsidy
- allows subsidy-eligible individuals who already have ended their COBRA coverage because their nine-month subsidy period ran out to resume such coverage retroactively (these individuals must pay their 35% portion of their COBRA premiums by February 17, 2010 or thirty (30) days after notice of the DDAA extension is provided by their plan administrator, whichever occurs later)
- also allows those who began paying their full COBRA premiums when their nine months of subsidized coverage ended to receive retroactive credit or a refund for the excess 65% of these premiums they already have paid.

The DDAA requires plan administrators to issue notices explaining these changes to all individuals who experienced a COBRA-qualifying termination on or after October 31, 2009. Plan administrators also must provide notices to all individuals who dropped COBRA coverage OR who paid their full COBRA premiums after the original nine-month subsidy period ended, advising these individuals of their right to make retroactive premium payments at the subsidized rates OR their right to receive retroactive credit or refunds, respectively. Each of these new notices must be provided to the affected individuals by February 17, 2010.

For individuals who become eligible for the COBRA subsidy after December 31, 2009, plan administrators must follow general COBRA notification rules. However, the usual COBRA notices must be updated to include the new provisions of the DDAA which are listed above.

The Department of Labor (“DOL”) currently is working on model notices that satisfy the requirements of the DDAA. These will be available on the [DOL website](#) in January.

If you have any questions regarding the DDAA or the COBRA subsidy generally, please contact [Drew Spry](#) at [dspry@millermartin.com](mailto:dspry@millermartin.com) or your Miller & Martin [Employee Benefits](#) or [Labor and Employment](#) attorney.

We hope you have a blessed New Year and look forward to seeing you at one of our January 2010 “Wage and Hour Self-Audit” seminars!

*The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.*

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