

Employee Benefits Alert: COBRA Subsidy Now Available through March 31, 2010

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By [Patricia Moran](#)

On March 2, 2010, President Obama signed into law the Temporary Extension Act of 2010 (the “Act”), which extends the 65% COBRA premium subsidy to workers who are involuntarily terminated and who lose health coverage on or before March 31, 2010. The Act also makes several changes and clarifications to the subsidy program.

Background

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 (DODA), signed into law December 19, 2009, the maximum duration of the subsidy was extended from nine to fifteen months, and the subsidy was made available to workers involuntarily terminated on or before February 28, 2010.

ARRA and DODA made clear that 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” or “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 a qualifying event that is an *involuntary termination of employment* of the covered employee; and
- actually elects COBRA coverage.

The Act’s Subsidy Extension

The subsidy is now available to workers involuntarily terminated on or before March 31, 2010.

Reduction of Hours Followed by a Termination of Employment

The Act provides that an individual may be an AEI if the qualifying event entitling him or her to COBRA is a reduction of hours followed by a subsequent involuntary termination of employment:

- The subsequent involuntary termination of employment will be treated as a qualifying event; however, the maximum COBRA coverage period (generally 18 months) will run from the date of the reduction in hours.
- The reduction of hours must occur during the period beginning September 1, 2008 and ending March 31, 2010; the subsequent involuntary termination of employment, however, may occur any time after March 2, 2010. The subsidy will apply to periods of coverage beginning on or after March 2, 2010.

- No COBRA payments are required between the reduction of hours and the involuntary termination of employment; in addition, such period will not be counted when determining whether the individual has had a “break in service” for purposes of the HIPAA portability rules.

Involuntary Termination – Safe Harbor

A qualifying event will be deemed to be an “involuntary termination of employment” provided that (1) the employer’s determination is based upon a reasonable interpretation of ARRA and the guidance issued thereunder and (2) the employer maintains supporting documentation, including an employer attestation, of the decision.

Clarification with Respect to Subsidy Period

The Act clarifies that, effective March 2, 2010, the subsidy is available for 15 months following the first day that the subsidy is available to the AEI. Previously, the 15-month period ran from the first day of the first month for which the subsidy provisions applied to an AEI.

The provisions of ARRA and DODA are discussed in more detail in our earlier [Employee Benefits Alerts and Advisories, available on our website](#).

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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