

Alerts and Updates

COBRA PREMIUM SUBSIDY EXTENDED

December 23, 2009

Ending months of speculation, President Obama extended the COBRA premium subsidy period by signing into law the Department of Defense Appropriations Act, 2010 (the "Act") on December 19, 2009.

As we reported in our *Alert*, [Stimulus Bill Includes Significant COBRA Changes](#), the 65-percent COBRA premium subsidy was scheduled to expire on December 31, 2009. The Act extends this eligibility period for an additional two months—through February 28, 2010—and also extends the maximum period for receiving the subsidy from nine to 15 months.

In light of the Act, the definition of "assistance eligible individual" now covers a qualified beneficiary who was involuntarily terminated during the period from September 1, 2008, through February 28, 2010, who is eligible for COBRA continuation coverage at any time during that period, and who elects the COBRA continuation coverage.

The Act outlines the following rules pertaining to the extension:

- *Election to pay premiums retroactively and maintain COBRA coverage.* In the case of any premium during an assistance eligible individual's transition period (as defined below), such individual shall be treated as having timely paid the premium if (1) such individual was covered under the COBRA continuation coverage for the period of coverage immediately preceding such transition period; and (2) such individual pays, not later than 60 days after December 19, 2009 (or, if later, 30 days after the date of provision of the notification required), the amount of such premium, after the application of the 65-percent subsidy. This allows individuals whose entitlement to the subsidy expired to be able to benefit retroactively.
- *Refunds and credits for retroactive premium assistance eligibility.* In the case of an assistance eligible individual who pays the premium amount for COBRA continuation coverage without regard to the subsidy, the prior rules regarding employer reimbursement with a subsequent refund shall apply.
- *Transition period.* For purposes of the Act, "transition period" means any period of coverage if (1) such period begins before December 19, 2009, and (2) the individual is entitled to the premium subsidy by reason of the extension from nine to 15 months. This transition period covers the period following the expiration of the individual's right to the premium subsidy and allows impacted individuals to benefit from the Act.

- *Notification.* In the case of an individual who was an assistance eligible individual at any time on or after October 31, 2009, or experiences a qualifying event related to COBRA continuation coverage on or after that date, the group-health-plan administrator shall provide an additional notification with information regarding the amendments made by the Act within 60 days after December 19, 2009 (*i.e.*, February 17, 2010) or, in the case of a qualifying event that occurs after December 19, 2009, a notification consistent with the COBRA notification rules that incorporate the Act. In the case of an assistance eligible individual who did not timely pay the premium for any period of coverage during the transition period or paid the premium for such period without regard to the subsidy, the group health-plan administrator shall provide to this individual, within the first 60 days of the individual's transition period, an additional notification with information regarding the changes made by the Act.

Now that the COBRA premium subsidy has officially been extended so that the eligibility period runs through February 28, 2010—and the maximum period for receiving the subsidy is 15 months—employers and plan administrators will need to properly notify the aforementioned assistance eligible individuals. This is likely to create additional administrative steps for group-health plans. The U.S. Department of Labor is anticipated to issue guidance on the Act and on the required notifications in the near future.

Duane Morris will continue to monitor this topic and provide updated *Alerts* accordingly.

For Further Information

If you have any questions about this *Alert*, please contact any of the [attorneys](#) in our [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.