



HIRE PERSPECTIVES

Winter 2009/2010

A periodic newsletter from the Labor & Employment Law Group at Dickinson, Mackaman, Tyler & Hagen, P.C.

COBRA Subsidy Extended and Expanded

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On December 19, 2009, President Obama signed legislation extending and expanding the COBRA subsidy for assistance eligible individuals. Embedded within the FY 2010 Department of Defense Appropriations Act, H.R. 3326, the new law makes several changes, as listed below:

1. Extends the sunset date on the COBRA subsidy from December 31, 2009 to February 28, 2010. Now, an assistance eligible individual (AEI) is any qualified beneficiary who becomes eligible for COBRA due to an involuntary termination of the covered employee that occurs from September 1, 2008 through February 28, 2010, sometimes referred to as the “subsidy period.”
2. Expands the maximum COBRA subsidy from nine months to 15 months. Now, an AEI can continue health benefits under COBRA for up to 15 months by paying only 35% of the premium.
3. No longer requires that an AEI lose health coverage, as well as employment, within the subsidy period. Previously, the loss of employment and the loss of health coverage *both* needed to occur in the subsidy period to be eligible for the COBRA subsidy. Now, only the loss of employment (or the qualifying event) needs to occur in the subsidy period. An example illustrates the change. Suppose John lost his job due to a RIF on February 15, 2010, but didn’t lose his health benefit coverage until March 31, 2010 because his premiums were deducted a month in advance as a pre-paid expense. Under the old COBRA subsidy’s definition of AEI, John and his qualified beneficiaries would not qualify as AEIs, but they are AEIs under the new definition in the amended COBRA subsidy legislation.
4. Allows AEIs who exhausted their COBRA subsidy before the legislation passed (those in a “transition period”), and who dropped their COBRA coverage, to retroactively pay premiums to maintain COBRA for the new maximum of 15 months. Premium payments must be made within 60 days of December 19 (which is February 17, 2010), or 30 days after a new notification is received from the plan administrator, whichever is later.
5. Allows AEIs who exhausted their COBRA subsidy before the legislation passed (those in a “transition period”), and who maintained their COBRA coverage at the full premium, to receive a refund or credit.
6. Requires administrators of health plans to send notifications to all persons who were AEIs on or after October 31, 2009, regarding this new legislation of expanded and extended COBRA benefits. This notice must be sent within 60 days, or no later than February 17, 2010, and should include information regarding the expanded COBRA subsidy period, the transition period, the retroactive premium option, and the refund/credit option. The Department of Labor (DOL) is expected to issue a sample notification letter for plan administrators to use for this purpose.
7. Requires administrators of health plans to send notifications to all persons who become AEIs after December 19, 2009, regarding the amendments to the American Recovery and Reinvestment Act of 2009’s (ARRA) COBRA subsidy provisions. These notifications are to be sent within the usual COBRA notification time period. Plan administrators can modify their current notification letters now, rather than wait for the DOL’s sample notice. When the DOL issues a sample notification letter, plan administrators can change their letters, as needed.

On December 21, 2009, the DOL’s Employee Benefits Security Administration (EBSA) issued a statement advising that updated sample notifications, guidance and fact sheets would be forthcoming to help employers comply with the newly amended law. On December 24, 2009, the EBSA issued a new Fact Sheet on the amended COBRA subsidy legislation. It is available at: <http://www.dol.gov/ebsa/newsroom/fscobrapremiumreduction.html>. We are still waiting for the updated sample notification letters.

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In the meantime, plan administrators should take the following actions:

1. Change COBRA notification materials to indicate that AEI eligibility for the COBRA subsidy period now ends on February 28, 2010 (rather than December 31, 2009), that the maximum period of the COBRA subsidy is 15 months (rather than nine months), and that the loss of coverage need not occur between September 1, 2008, and February 28, 2010, to meet the definition of an AEI.
2. Issue the updated COBRA materials to covered employees and their qualified beneficiaries for qualifying events occurring between December 19, 2009, and February 28, 2010.
3. Watch for new sample notifications from the DOL/EBSA for persons who were AEIs on or before December 19, 2009. We expect at least three new notifications: one for AEIs who exhausted their COBRA subsidy, dropped coverage, and can choose a retroactive premium option; another for AEIs who exhausted their COBRA subsidy, continued coverage at the full premium, and are due a refund or credit; and another for new AEIs who experienced qualifying events after December 19, 2009. A fourth notification may be required to deal with state group health insurance continuation laws, such as Iowa's Chapter 509B.
4. Prepare labels for a mailing to those persons who were AEIs on or before December 19, 2009. Doing so will allow you to respond more quickly when the sample notification language is released.

If you have questions about the extended and expanded COBRA subsidy, please contact a member of the Firm's [Employment & Labor Law Group](#) or the Dickinson attorney with whom you normally work.

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Hire Perspectives is published periodically by the law firm of Dickinson, Mackaman, Tyler & Hagen, P.C., 699 Walnut Street, Suite 1600, Des Moines, Iowa 50309.

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