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Federal Government Extends COBRA Subsidy

On March 2, 2010, President Obama signed into law legislation that extends the Federal government's COBRA premium subsidy program. The new legislation extends the subsidy program until March 31, 2010, retroactive to March 1, 2010. Currently, the Federal government is subsidizing the cost of COBRA continuation coverage for certain individuals that experience a loss of coverage under employer-sponsored health plans due to an involuntary termination. Previously, only employees who were terminated prior to February 28, 2010 were eligible for the subsidy. Pursuant to this recent extension, employees who are involuntarily terminated between March 1, 2010 and March 31, 2010 will also be eligible for the subsidy.

Under the COBRA subsidy program, the terminated employee pays, in effect, only 35% of the COBRA premium, and the remaining 65% is covered by an advance from the employer. The employer is then entitled to recoup the 65% it has advanced for the cost of that coverage by taking a credit against its own employment tax liability. The period of the subsidy can last for up to 15 months.

It is important to note that the subsidy is still based on the amount that the terminated employee is actually obligated to pay. In other words, the COBRA subsidy is proportionately reduced to the extent the employer has assumed liability for the terminated employee's COBRA premiums. This is significant because it is not uncommon for employers to agree to pay all or a portion of a former employee's COBRA premiums as part of a severance package. In order to maximize the use of the COBRA subsidy, therefore, the terminated employee would have to be obligated to pay the full amount of his or her COBRA premiums since, after the subsidy is taken into account, the terminated employee's actual out-of-pocket cost would be limited to 35% of the total premiums. It is also important to note that the subsidy begins to phase out if the terminated employee's 2010 income exceeds $125,000 (or $250,000 for joint filers), and is completely unavailable if the terminated employee's 2010 income exceeds $145,000 (or $290,000 for joint filers). Any individual who receives the subsidy whose income exceeds these limits will be required to repay all or a portion of the subsidy, as the case may be.