

Employment Bulletin - March 3, 2010

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PRESIDENT OBAMA EXTENDS COBRA SUBSIDY FOR UNEMPLOYED WORKERS AGAIN

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Last night, President Obama signed into law the Temporary Extension Act of 2010, which among other provisions, includes a further extension of the federal COBRA subsidy created by the American Recovery and Reinvestment Act of 2009 ("ARRA"). Under ARRA, employees who were involuntarily terminated between September 1, 2008 and December 31, 2009 are entitled to a government subsidy of 65% of the premium cost for health care continuation coverage under COBRA for a period of nine months. In December 2009, the 2010 Department of Defense Appropriations Act extended coverage to employees who lost their jobs between December 31, 2009 and February 28, 2010. It also expanded the total allowable time during which an individual may receive the COBRA subsidy from nine months to fifteen months. The Temporary Extension Act of 2010 provides for an additional month of coverage, meaning that employees who involuntarily lose their jobs between February 28, 2010 through March 31, 2010 will be entitled to the premium subsidy.

In addition, the Temporary Extension Act of 2010 creates a special rule for an employee who lost coverage under an employer-sponsored health plan due to a reduction in hours of employment during the period of coverage. Under the special rule, if the employee is subsequently terminated, the involuntary termination is deemed the qualifying event for COBRA continuation coverage, even though the employee had already lost coverage under the group health plan. In that instance, the employee may elect COBRA continuation coverage and obtain the benefit of the subsidy. The law makes clear that an employee is entitled to the benefit of this special rule regardless of whether he or she elected COBRA continuation coverage upon the reduction of hours or discontinued coverage prior to the involuntary termination. Administrators of group health plans will need to provide notice to employees who are eligible to elect COBRA continuation coverage pursuant to this special rule.

The Temporary Extension Act of 2010 also includes several clarifications regarding a determination as to whether an employee's termination was involuntary or not. The law establishes that an employer's reasonable interpretation of ARRA and administrative guidance that an employee was involuntarily terminated shall be determinative, provided that the employer maintains supporting documentation, including an attestation of involuntary termination. On the other hand, the law creates a new enforcement mechanism if a group health plan disputes an employee's eligibility for the subsidy. The Secretary of Labor may assess a penalty of \$110 per day against a group health plan which fails to comply with her determination that an employee is eligible for the COBRA subsidy.