

COBRA Subsidy Extension Embedded in Defense Appropriations Bill

By Mark E. Terman

The American Recovery and Reinvestment Act of 2009 (ARRA), commonly known as the federal economic stimulus bill, passed earlier this year, required companies to provide a COBRA subsidy for up to 9 months. The ARRA also requires employers to pay 65% of the group health care insurance plan premiums for COBRA assistance eligible employees who were involuntarily terminated from employment between September 1, 2008 and December 31, 2009. Eligible individuals pay only 35% of their COBRA premiums. The employer may recover the 65% premium subsidy by taking a credit on its quarterly federal employment tax return. Certain high-income individuals may have to repay all or part of the premium subsidy through an increase in their income tax liability for the year. Subsidy eligibility ends when the individuals are eligible for coverage under another group medical insurance plan or Medicare, or the normal period for COBRA eligibility ends. Employees terminated for cause may not be assistance eligible. By now, employers or their COBRA administrators have amended their COBRA notices and practices to be ARRA compliant.

On December 19, 2009, President Obama signed into law H.R. 3326, the Department of Defense Appropriations Act, 2010 (Act). The Act immediately amends the ARRA by extending the COBRA subsidy period from 9 to 15 months and extending the cut-off for commencement of the subsidy period from December 31, 2009 to February 28, 2010.

Employers or their COBRA administrators must now update their COBRA eligibility and election notices to include the

extended subsidy information. In addition, within 60 days of enactment of the Act, special notice must be given to any COBRA assistance eligible individual who was either already on COBRA on or after October 31, 2009 or was involuntarily terminated on or after October 31, 2009 who already received a COBRA rights notice that did not include the subsidy extension information.

According to the U.S. Department of Labor's (DOL) press release, individuals who had reached the end of the reduced premium period before the legislation extended it to 15 months will have additional time to pay the reduced premiums related to the extension. To continue their coverage they must pay the 35% of premium costs by "60 days after date of enactment" or, if later, 30 days after notice of the extension is provided by their plan administrator.

Except for the DOL's press release regarding the enactment of the Act, the DOL website has not been updated with Q&A and new notice exemplars. Employers should sign up for email notice of updates on the DOL website to stay current on these developments. See, <http://www.dol.gov/ebsa/cobra.html>.

On behalf of the Firm, we wish you Happy Holidays and a prosperous and healthy New Year. If you have questions about this new legislation or any other aspects of employment law and litigation, please let us know. www.reish.com.

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