



Legislative Update

December 30, 2009

Additional Details Regarding Amended COBRA Subsidy Law

As was previously reported by Conner Strong in a special alert, Congress has passed and the President has signed, the Fiscal Year 2010 Department of Defense Appropriations Act ("Act"), which includes important new changes to the COBRA premium subsidy that was created by the American Recovery and Reinvestment Act of 2009 (ARRA). The changes made by the Act are retroactive to the original February 17, 2009 ARRA enactment date. Below are the major highlights of the changes:

- Extension of Eligibility Period - The original ARRA legislation provided a COBRA premium subsidy for certain employees and their families who are involuntarily terminated between September 1, 2008 and December 31, 2009. The eligibility period has been extended for an additional 2 months through February 28, 2010.
- Extension of Duration of Premium Subsidy - Under the original ARRA, assistance eligible individuals were entitled to a subsidy for up to 9 months of their COBRA maximum coverage period. Under the new law, the maximum period for receiving the COBRA premium subsidy has been extended for an additional 6 months to 15 months.
- Additional Notification Requirements - Notification of the changes made by the Act must be provided within 60 days after the date of enactment (in this case by February 17, 2010) to (a) individuals who are assistance eligible individuals on or after October 31, 2009, and (b) individuals who have a COBRA qualifying event of termination of employment (voluntary or involuntary) on or after October 31, 2009. In addition, notification of the changes must be provided consistent with COBRA's normal election notice timing rules to individuals who have a qualifying event after December 19, 2009 (the date of enactment).
- Transition Period Rules - Special rules are included for treatment of assistance eligible individuals who exhausted their full 9 months of premium assistance before the period was extended to 15 months. These individuals fall into two groups. The first group is considered those who dropped COBRA after their original 9 month subsidy period ended and must now be permitted to maintain their COBRA coverage by retroactively paying premiums that were due during their "transition period." (The term "transition period" appears to mean any period of coverage beginning before December 19, 2009 during which an assistance eligible individual would have been eligible for premium assistance had the extension been available sooner.) Such individuals in this category must make payment by February 17, 2010 or if later, within 30 days after notice of the extension is provided by their COBRA plan administrator.

The second group is comprised of those who paid an unsubsidized premium during their transition period and who must now be provided with a refund or credit against future premiums. Plan administrators must provide a notice of the extended subsidy, including information about the right to make retroactive payments, to both groups of individuals within the first 60 days of the individual's transition period.

- Eligibility Based on Timing of Qualifying Event - The new Act clarifies that for purposes of an individual's eligibility for the subsidy, as well as the timing of notices, the qualifying event is what matters. This means the qualifying event must occur on or before February 28, 2010.

It is believed that the Department of Labor will have to issue a new set of model notices incorporating information about the COBRA subsidy extension. In order to minimize the confusion over the transition period rules, it is believed that some employers may issue quick, informal communications for assistance eligible individuals who are still within their premium grace periods to alert them to the extension and their right to continue to pay a reduced COBRA premium going forward. For those employers considering doing so, it is advisable that they first check with counsel to ensure there are no additional liabilities involved in such a simplified process.

Please contact your Conner Strong representative with any questions, toll-free at 1-877-861-3220.

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