



# Legislative Update

March 16, 2010


## ADDITIONAL DETAILS ON COBRA SUBSIDY EXTENSION

Congress has passed and the President has signed the Temporary Extension Act of 2010 (TEA) which includes important new changes to the COBRA premium subsidy originally 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 subsidy and the new extension employers must be familiar with:

The TEA extended the COBRA premium reduction eligibility period for one month until March 31, 2010. The TEA also expanded eligibility to individuals who experience a qualifying event that is a reduction of hours occurring at any time from September 1, 2008 through March 31, 2010, which is followed by an involuntary termination of employment on or after March 2, 2010 through March 31, 2010. This expansion also includes a second election opportunity for these individuals who had a reduction of hours qualifying event followed by an involuntary termination, if they did not elect COBRA when it was first offered or elected but subsequently discontinued COBRA.

- The premium reduction is available to “assistance eligible individuals”. This is defined as the employee or a member of his/her family who elects COBRA coverage following a qualifying event related to an involuntary termination of employment that occurs at any point from:
  - September 1, 2008 through March 31, 2010; or
  - March 2, 2010 through March 31, 2010 if:
    - the involuntary termination follows a qualifying event that was a reduction of hours; and
    - the reduction of hours occurred at any time from September 1, 2008 through March 31, 2010.
- A reduction of hours is a qualifying event when the employee and his/her family lose coverage because the employee, though still employed, is no longer working enough hours to satisfy the group health plan’s eligibility requirements;
- Generally, the maximum period of continuation coverage is measured from the date of the original qualifying event (for Federal COBRA, this is generally 18 months). However, ARRA, as amended by the TEA, provides that the 15 month premium reduction period begins on the first day of the first period of coverage for which an individual is “assistance eligible.” This is of particular importance to individuals who experience an involuntary termination

- 
- following a reduction of hours. Only individuals who have additional periods of COBRA (or state continuation) coverage remaining after they become assistance eligible are entitled to the premium reduction;
- For purposes of the ARRA, COBRA includes continuation coverage required under Federal law (COBRA or Temporary Continuation Coverage) or a State law that provides comparable continuation coverage (for example, so-called “mini-COBRA” laws);
  - Those who are eligible for other group health coverage (such as a spouse’s plan) or Medicare are not eligible for the premium reduction. There is no premium reduction for periods of coverage that began prior to February 17, 2009;
  - Assistance eligible individuals who pay 35% of their COBRA premium must be treated as having paid the full amount. The premium reduction (65% of the full premium) is reimbursable to the employer, insurer or health plan as a credit against certain employment taxes.
- The ARRA, as amended by the TEA, mandates that plans notify certain current and former participants and beneficiaries about the premium reduction. The DOL is updating its existing models and creating several additional models to help plans and individuals comply with these requirements. Each model notice will be designed for a particular group of individuals and will contain information to help satisfy the ARRA’s notice provisions, including those added by the TEA. As soon as the notices are complete, they will be available on EBSA’s web site.
  - Individuals who are denied treatment as assistance eligible individuals and thus are denied eligibility for the premium reduction (whether by their plan, employer or insurer) may request an expedited review of the denial by the DOL. The DOL must make a determination within 15 business days of receipt of a completed request for review. The official application form is available at [www.dol.gov/COBRA](http://www.dol.gov/COBRA) and can be filed online or submitted by fax or mail.
  - TEA also provides that the appropriate Secretary may assess a penalty against a plan sponsor or health insurance issuer of up to \$110 per day for each failure to comply with such Secretary’s determination 10 days after the date of the plan sponsor’s or issuer’s receipt of the determination.

For more information, refer to the DOL Fact Sheet available at  
<http://www.dol.gov/ebsa/newsroom/fsCOBRAPremiumReduction.html>

**If you have questions or need assistance with these new changes,  
please contact your Conner Strong representative toll-free at 1-877-861-3220.**

*This Legislative Update is provided for general informational purposes only and is not intended to be legal advice. Readers are urged to contact an attorney for legal advice or assistance.*

