

## **COBRA SUBSIDY EXTENDED – DOL ISSUES REVISED NOTICES**

On December 21, 2009, legislation was enacted extending both the eligibility period for, and the maximum period for receiving, the premium subsidy available to involuntarily terminated employees and their eligible dependents who elect to continue employer-provided health insurance under COBRA or similar state laws. Eligibility for the subsidy now extends as a result of involuntary terminations that occur through February 28, 2010 (rather than December 31, 2009), and the maximum subsidy period has been increased to 15 months from 9 months. Thus, under this legislation:

- (a) Persons who received the subsidy until their 9-month subsidy period ended during November 2009 may be eligible to receive the subsidy for up to another 6 months.
- (b) Persons receiving the subsidy after November 30, 2009, or who became eligible for the subsidy as a result of the covered employee's involuntary termination occurring on or after October 31, 2009 and prior to January 1, 2010, and who are still within their period when they can elect continuation coverage, may be eligible to receive the subsidy for up to a total of 15 months.
- (c) Persons eligible for the subsidy as a result of the covered employee's involuntary termination occurring after December 31, 2009 and before March 1, 2010 may be eligible to receive the subsidy for up to 15 months.

Under this legislation, individuals who received the subsidy for 9 months until it expired in November 2009 and who lost their coverage because they did not pay the required premium for December may reinstate their coverage by paying the 35% subsidized rate by the later of (i) February 17, 2010, or (ii) within 30 days after receiving notification of the extension from the group health plan. Further, individuals who received the subsidy and continued their coverage after their 9-month subsidy ran out in November by paying the higher non-subsidized premium are entitled to either a refund of the difference over the subsidized premium or a credit for this amount against subsequent premium payments.

The legislation requires group health plans to provide notices to eligible individuals about the subsidy extension as follows:

- (a) Persons eligible for the subsidy as of October 31, 2009 (unless they are in a "transition period" as described below and are receiving the subsidy),

including those whose 9-month subsidy ended in November 2009 who did not pay their December 2009 premium or paid a non-subsidized premium, and persons who, as a result of a termination of employment on or after October 31, 2009 lost their health coverage (and who have not already been provided notice of the subsidy extension), must be given notice of the subsidy extension by February 17, 2010. This notice must include information on the ability to make retroactive premium payments to reinstate coverage if coverage was lost due to failure to pay the premium.

- (b) Persons receiving the subsidy who are in a “transition period” must be provided notice of the changes to the subsidy within 60 days of the first day of the transition period. A transition period begins the first day after the end of receiving the subsidy for 9 months.
- (c) Persons for whom a qualifying event occurs after December 21, 2009 must be given notice of their rights to continuation coverage, including information about the subsidy, within the usual deadlines for providing notice of continuation coverage.

The Department of Labor (DOL) has revised its model notices for notifying persons about continuation coverage to reflect the requirements of this subsidy extension legislation. These notices may be found at <http://www.dol.gov/ebsa/COBRAModelNotice.html>, and include: (i) an updated *General Notice* (for first-time notice of COBRA election rights); (ii) a *Premium Assistance Extension Notice* (for persons who have already been provided a COBRA election notice but not notice of the subsidy extension); and (iii) an updated *Alternative Notice* (for persons who become eligible of continuation coverage under state law). Note that DOL has indicated that, if persons whose qualifying event was a termination of employment in December 2009 but who were not eligible for COBRA coverage until January 2010 were not provided proper notice about the subsidy extension, those persons should be given the updated *General Notice* and the full 60 days from the date the updated notice is provided to make a COBRA election.

Employers should also note that it is not certain whether states which have laws similar to COBRA (particularly ones that apply to small employers not subject to COBRA) but which provide for continuation periods of less than 15 months (such as Virginia), will change their laws to allow continuation coverage for up to 15 months to allow persons eligible for the subsidy to receive it for this longer period. Thus, developments in this area should also be monitored.

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