

“What keeps you up at night?”

Saul Ewing Labor,
Employment and
Employee Benefits
Practice Group:

Harriet E. Cooperman
Co-Chair

Robert L. Duston
Co-Chair

COBRA Subsidy Extended — Additional Notices Required

By Joanne G. Jacobson

On December 21, President Obama signed into law an extension of the maximum COBRA premium subsidy period by 6 months (from 9 months to 15 months) and an extension of the initial eligibility for the subsidy for job losses through February 28, 2010, by signing the Department of Defense Appropriations Act of 2010 (the “Act”). This COBRA extension also requires employers to provide additional notices: COBRA eligible individuals must be notified within 60 days of the date they either let their COBRA coverage lapse (due to nonpayment of premiums) or overpaid the premium. In addition, the new law requires employers to notify individuals who were eligible for the COBRA subsidy on or after October 31, 2009, or who were involuntarily terminated on or after that date, of the information regarding the subsidy extension. This additional notification must be made no later than February 19, 2010.

The American Recovery Reinvestment Act (ARRA), enacted on February 17, 2009, introduced a COBRA subsidy for eligible individuals who were involuntarily terminated between September 1, 2008 and December 31, 2009 and their qualified beneficiaries. Under ARRA, an assistance eligible individual who elects COBRA continuation coverage pays 35% of the amount he would have to pay for COBRA continuation coverage if he were not an eligible individual. The employer pays the other 65% and is reimbursed by way of a federal payroll tax credit. The subsidy applies until the earliest of 9 months, the date an eligible individual becomes eligible for other group health plan coverage or Medicare coverage, or the date the individual is no longer eligible for COBRA coverage.

Under the Act, the new law extends the eligibility period for the subsidy to February 28, 2010 and extends the subsidy period from 9 months to 15 months; any individual who previously had the subsidy that expired after 9 months will have an opportunity to elect COBRA coverage at the subsidized rate for an additional 6 months. If an individual continued on COBRA by paying the full COBRA premium after the 9-month period, the excess must be refunded or credited to the individual. If the individual terminated his COBRA coverage after the 9-month subsidy period, the individual will have the opportunity to elect subsidized COBRA coverage retroactive to the date he stopped paying for COBRA. To continue COBRA, the 35% premium must be paid by February 19, 2010 or, if later, 30 days after notice of the extension is provided by the plan

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administrator. For example, a beneficiary whose 9 months of subsidized coverage ran out November 30, 2009 and who did not pay the unsubsidized premium for December 2009 now has the option to pay his 35% share of December's premium in January 2010 and receive COBRA coverage for December.

ADDITIONAL NOTICES

The new law requires employers to notify individuals who were eligible for the COBRA subsidy on or after October 31, 2009, or who were involuntarily terminated on or after that date, of the information regarding the subsidy extension. This notification must be made no later than February 19, 2010.

In addition, the plan administrator must notify individuals who were covered under COBRA and failed to timely pay the 35% premium or paid the full (100%) premium after the COBRA subsidy expired, of the changes made by the Act, including information on the ability to make retroactive premium payments at the subsidized rate in order to maintain COBRA coverage. Affected individuals must be notified within 60 days of the date they either let their COBRA coverage lapse (due to nonpayment of premiums) or overpaid the premium. This could be as early as January 16, 2010 for some plans.

It is unclear at this point whether or not the Department of Labor will issue model notices, as it did with ARRA. Therefore, it would

be prudent for employers at this time to update their COBRA notices for the subsidy extension and start drafting the notice of retroactive COBRA rights.

Further information on the subsidy, including new notice requirements, updated guidance and fact sheets, can be found as they become available at the Department of Labor's COBRA web site, www.dol.gov/cobra, or at www.dol.gov/cobra.

This Alert was written by Joanne G. Jacobson, a member of the firm's Labor, Employment and Employee Benefits Practice Group. Joanne can be reached at 202.295.6616 or jjacobson@saul.com. This publication has been prepared by the Labor, Employment and Employee Benefits Practice Group for information purposes only.

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