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Benefits Legal Update

COBRA Premium Subsidy Extension Signed into Law

On December 21, 2009, the President signed into law an extension of the COBRA subsidy created under the American Recovery and Reinvestment Act (ARRA). The bill extends both the length of the subsidy period and the eligibility period for the subsidy.

Background: COBRA and the ARRA Premium Subsidy

COBRA permits employers to charge employees electing COBRA coverage up to 102 percent of the cost of such continuation coverage. ARRA&#151which was passed earlier this year&#151created a temporary government subsidy of COBRA premiums for individuals who were involuntarily terminated between September 1, 2008, and December 31, 2009, and who also became eligible for COBRA continuation coverage during that time period.

The government subsidy created by ARRA is equal to 65 percent of the premiums the terminated employees, and their covered dependents, are required to pay for COBRA coverage. Put another way, those eligible for the subsidy need to pay only 35 percent of the applicable COBRA premiums. The subsidy applies to any group health plan, whether insured or self-insured, excluding health flexible spending accounts. The subsidy also applies to plans exempt from federal COBRA but subject to state mini-COBRA laws. The maximum period for subsidy coverage under ARRA is currently nine months.

Enrollment in COBRA continuation coverage increased significantly once the ARRA subsidy became available, and many employees who otherwise could not afford the full COBRA premium were able to keep their health insurance coverage. As many individuals are still struggling to find work and maintain their health insurance, several members of Congress sought to extend the COBRA subsidy to allow individuals who were involuntarily terminated in late 2009 and early 2010 to receive the subsidy, and to provide the subsidy for a greater period of time.

Extension of COBRA Subsidy

The bill extends the COBRA subsidy in two ways. First, the subsidy period is increased from 9 to 15 months. T ore, if individuals have exhausted the original 9 month subsidy period, the subsidy period is now retroactively extended for an additional 6 months (provided that the individuals remain eligible for the subsidy and their COBRA periods have not ended). Likewise, individuals now becoming eligible for COBRA can take advantage of the subsidy for up to 15 months.

Second, the bill extends the timeframe in which individuals can become eligible for the subsidy. Previously, employees had to lose coverage prior to December 31, 2009. Under the extension, employees who have a qualifying event on or before February 28, 2010, will be eligible for the subsidy. This means that COBRA-eligible individuals involuntarily terminated on February 28, 2010, will be subsidy-eligible, even if their COBRA begins on March 1, 2010.

Notice of the extension is required to be provided to COBRA eligible individuals by February 17, 2010. Employers will be required to provide notices describing the revised subsidy program to anyone eligible for the subsidy or terminated from employment (whether voluntary or not) on or after October 31, 2009. Further, notice should be provided to assistance-eligible individuals who exhausted the subsidy and then dropped COBRA so that they now can pay reduced premiums for retroactive coverage for up to six more months. Such individuals who kept COBRA but who paid the full premium for December and/or January should be notified that they will receive credit for, or reimbursement of, any overpayments.

Other Provisions of the Subsidy Program Remain the Same

The bill extends only the maximum duration of the subsidy and the timeframe for eligibility. It does not change the general provisions of the subsidy itself. The subsidy will remain at 65 percent of the employee's COBRA premium. Also, the process by which the subsidy is provided has not changed. The government does not pay the subsidized cost of coverage; rather, the employer is responsible for covering the cost of the subsidy and recoups these amounts through an offset against the employer's employment tax withholding obligation. This offset may be claimed each time the employer transmits withholding to the federal government or at the end of each quarter. The IRS has updated Form 941 to reflect these changes. The employer is required to keep records regarding the utilization of the subsidy by its former employees.

The subsidy continues to be limited to individuals who have been involuntarily terminated from employment. This means that certain employees and their beneficiaries are not eligible for the premium reduction subsidy at all&#151for example, those who become eligible for COBRA for reasons other than involuntary termination (such as a reduction in hours, divorce, or aging out of eligibility requirements). Also, employees who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction. Finally, the subsidy does not apply to terminated employees who have an adjusted gross income of more than $125,000 ($250,000 for joint filers). Any premium subsidy received by an ineligible individual will be recaptured through additional income taxes payable by such individual.

To receive more information on this law change or to obtain a copy of the relevant provisions, please contact one of the following attorneys:

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