

December 21, 2009

## COBRA Subsidy Extension: A Gift for the Holidays

Congress has passed and the President has signed legislation extending the subsidy for COBRA coverage. The subsidy was initially passed as part of the American Recovery and Reinvestment Act in February of 2009 and related back to individuals who experienced an involuntary termination of employment on or after September 1, 2008. Under the terms of the subsidy, assistance-eligible individuals ("AEIs") pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the plan sponsor through a tax credit.

Group medical plan sponsors should be aware of four critical components in the extending legislation:

1. Extension of Date. AEIs now can be eligible for the subsidy if they incur an involuntary termination triggering COBRA by **February 28, 2010**. Previously, AEIs had to become eligible for COBRA by December 31, 2009.
2. Extension of Subsidy Period. The length of the subsidy period is extended from 9 months to **15 months**. AEIs who already have received 9 months of subsidy are thus entitled to an additional 6 months of subsidy; the extension does not mean the AEIs receive an *additional* 15 months.
3. Sponsor Notice Requirement. No later than 60 days from the date the legislation was enacted, the plan sponsor must notify any individual who was an AEI on or after October 31, 2009 regarding the extension. Going forward, the plan sponsor must provide the revised subsidy information within the statutory time period for providing other COBRA information.
4. Retroactive Election by Participant. An AEI who dropped the COBRA coverage upon the expiration of the subsidy earlier this year may elect to pay premiums retroactively to maintain COBRA coverage and not have a gap in coverage. As part of a "transition period," AEIs have until the later of 60 days from the date the legislation was enacted or 30 days from the date of the required sponsor notice to "re-elect" COBRA coverage and pay the subsidized premium to the employer. If an AEI already paid a full premium, the excess will be credited against additional months of coverage or refunded.

If you have any questions about the subsidy extension, or any other aspect of your company's employee benefit plans, please contact a member of our Benefits Law Group.

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