

EMPLOYMENT LAW ALERT

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COBRA Subsidy Extended and Expanded

On December 19, 2009, President Obama signed into law the Department of Defense Appropriations Act, 2010 (2010 DOD Act), part of which extends and expands the program that subsidizes continued health care coverage under COBRA for certain involuntarily terminated employees. The 2010 DOD Act was effective upon its enactment; most employers must now learn about the 2010 DOD Act changes, amend their COBRA administrative processes and forms, and provide new, revised COBRA notices.

Under the original COBRA subsidy program, enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA), an “assistance eligible individual” (AEI) terminated between September 1, 2008 and December 31, 2009 can continue health coverage under COBRA by paying 35% of his or her required COBRA premium for up to nine months. The employer or other coverage provider pays the remaining 65%, which it can recover as a credit against employment taxes.

The 2010 DOD Act changes the COBRA subsidy program in two key ways:

- By extending the eligibility deadline by two months, from December 31, 2009 to February 28, 2010; this means that employees involuntarily terminated on or before February 28, 2010 may now be eligible for the program. The new law also provides that an individual will be eligible for the subsidy if his or her qualifying event occurs on or before February 28, 2010—rather than requiring that the individual be eligible for COBRA coverage on or before February 28, 2010.
- By expanding the maximum period of time for which an eligible individual may receive subsidized COBRA coverage from nine months to 15 months. As a result, individuals who have already received subsidized COBRA coverage for nine months may be entitled to an additional six months of subsidized coverage.

The 2010 DOD Act ushers in new notice requirements as well. Under the new law, plan administrators must provide notice of the 2010 DOD Act changes:

- By February 17, 2010 to any individual who is an AEI or otherwise experiences a COBRA qualifying event relating to termination of employment on or after October 31, 2009; and
- Within 60 days of the start of an AEI's "transition period." The "transition period" begins immediately after the end of the nine months of subsidized premium in effect under the ARRA before the amendments made by the 2010 DOD Act, as long as those nine months ended before December 19, 2009 and the subsidy provisions of the 2010 DOD Act would apply due to the extension from nine to 15 months.

AEI's who had reached the end of the subsidy period before December 19, 2009 will have an extension of their grace period to pay the reduced premium. To continue their coverage they must pay the 35% of premium costs by February 17, 2010 or within 30 days of receipt of the notice described above, whichever is later. An individual who pays an unsubsidized COBRA premium during his or her transition period is entitled to either a reimbursement of the excess paid or a credit towards future premiums.

The U.S. Department of Labor has indicated that additional information and model notices will be available soon on its [website](#).

Small employers that are not subject to federal COBRA requirements must comply with these new rules to the extent the employer is subject to state laws that provide requirements for continuation of medical coverage.

If you have questions about this Alert, please contact any member of our [group](#).

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