



Don't Put Away Those New COBRA Forms Just Yet

Yesterday, President Obama signed into law an extension and expansion of the COBRA premium subsidy law that we have previously referred to as "ARRA COBRA." As you know from previous alerts and trainings we have conducted, those "assistance eligible individuals" who were eligible for the premium subsidy were individuals who, among other things, were involuntarily terminated between September 1, 2008 and December 31, 2009. With the economy still struggling, we anticipated some form of extension of this subsidy, and we received it yesterday. The extension means new and additional compliance obligations for employers, with the subsidy program now running through February 28, 2010 and, perhaps complicating the matter more, the actual subsidy period being expanded by six months. There are new notice requirements that must be met in a short period of time.

Refresher course (in case you've blocked this from your memory for therapeutic reasons): Earlier this year, in response to the poor economic conditions, the American Recovery and Reinvestment Act of 2009 ("ARRA") established a new law under which "assistance-eligible individuals" (AEIs) were initially entitled to receive a 65% subsidy for continuation coverage premiums for up to nine months. Under the original law, an AEI was any COBRA-qualified beneficiary who elected COBRA coverage and: (1) had a loss of group health coverage as a result of an involuntary termination of employment (other than gross misconduct); and (2) had a qualifying event between September 1, 2008, and December 31, 2009, was otherwise eligible for COBRA coverage during that period and elected that coverage. As you will likely recall, ARRA COBRA included various new administrative and notice requirements for employers, many of which had to be met within a short period or time after ARRA was enacted.

Subsidy extension: The key provisions of the COBRA subsidy extension are as follows:

- The amount of time an AEI can receive a subsidy has increased from 9 to 15 months.
- The subsidy eligibility period has expanded to include the period that begins with September 1, 2008, and ends with February 28, 2010. The new rule does not require that COBRA coverage begin by the end of the period (2/28/10). Instead, the person is an AEI as long as the COBRA qualifying event (involuntary termination of employment that results in loss of coverage) occurs by February 28, 2010 and the AEI is entitled to COBRA coverage as a result of that event.
- For any AEI for whom the premium subsidy now applies due to the extension, there is a transition period consisting of any period of coverage that begins before the extension's enactment date. Any period during which the applicable premium is paid is to be treated as a period of coverage, irrespective of any failure to timely pay the applicable premium for such period.

- Plan administrators must provide a notice on extension rights to AEIs who did not timely pay the COBRA premium for any period of coverage during their transition period or who paid the full (non-subsidized) premium without regard to the subsidy rules. The notice must be provided within the first 60 days of the transition period, and must include information on the ability to make retroactive premium payments as a result of the transition period.
- In the case of any premium for a period of coverage during an AEI's transition period, an AEI shall be treated for purposes of any COBRA provision as having timely paid the premium amount if he or she: (a) was covered under the COBRA coverage to which such premium relates for the period of coverage immediately preceding the transition period; and (b) pays, not later than 60 days after the extension enactment date (or, if later, 30 days after the new notices are provided) the amount of the subsidized premium.
- If an AEI paid the full premium amount during his or her transition period for coverage without regard to the subsidy amount, ARRA's rules allow for that AEI to be reimbursed for the excess premiums.
- Plan administrators must provide notices of the new extension rights to individuals who became AEIs on or after October 31, 2009, or experience a qualifying event (consisting of termination of employment) relating to COBRA coverage on or after that date. The notice must be provided by February 19, 2010 (60 days after the extension's enactment date) or, in the case of a qualifying event occurring after the enactment date, consistent with the timing of COBRA notices.

Of course, depending on what happens with the economy, there may be further COBRA subsidy extensions. At least one jobs bill, scheduled for consideration by Congress in early 2010, would include an extension of the COBRA subsidy to June 2010. LMV will be analyzing the COBRA extension act in the coming days and we will have a COBRA Subsidy Extension Webinar on **January 6, 2010** from **9:00-10:00 a.m.** We will send out more information but in the meantime, contact Edi Heavner at eheavner@lehrmiddlebrooks.com to register for the upcoming "COBRA Subsidy Extension" webinar.