

Congress Extends COBRA Subsidy for Involuntarily Terminated Employees

The American Recovery and Reinvestment Act of 2009 (the "Stimulus Act") provided a government subsidy of 65% of the COBRA premium actually charged to anyone who became eligible for COBRA between September 1, 2008 and December 31, 2009 because of an involuntary termination of employment (other than for gross misconduct). You can read our summary of key elements of the COBRA subsidy under the Stimulus Act by clicking on the following link: <http://www.postschell.com/docs/publications/412.pdf>.

With the eligibility deadline for the subsidy fast approaching, there was concern about the need for additional relief. In particular, employees who were terminated before December 31, 2009 might nevertheless be ineligible for the subsidy if they did not become eligible for COBRA until January 1, 2010 or later, e.g., because of extended employer-paid health care coverage.

Congress, in legislation signed by President Obama on December 19, has now provided that relief, at least for the short term. The measure is included in the Department of Defense Appropriations Act of 2010 and includes the following highlights:

- Employees who are terminated involuntarily on or before February 28, 2010 and become eligible for COBRA are entitled to the subsidy. Unlike the eligibility deadline under the Stimulus Act, terminated employees need not become eligible for COBRA by February 28, 2010.
- The maximum subsidy period has been expanded from 9 months to 15 months.
- Eligible individuals who took advantage of the subsidy under the Stimulus Act, but allowed coverage to lapse when the subsidy expired, will be permitted to reinstate coverage retroactively and pay the subsidized premium for the remainder of the new, expanded 15- month subsidy period if they pay the subsidized premium for retroactive coverage by the later of February 17, 2010 or 30 days after the notice required by the new law is provided (see below).
- Individuals who continued coverage and paid the full COBRA premium after the original subsidy expired must be permitted to take advantage of the subsidy for the remainder of the expanded 15- month period either by receiving a refund for previously over- paid premiums or by receiving a credit against future premiums (so long as the credit can be exhausted within 180 days of payment).
- Plan administrators must provide notices of the new COBRA subsidy rules to each of these groups of eligible individuals (i.e., those with lapsed coverage and those due refunds for overpaid premiums), as well as to anyone who was eligible for the COBRA subsidy, or would have been eligible under the new rules, at any time on or after October 31, 2009. These notices must be provided no later than February 17, 2010 or, in the case of an individual who is terminated involuntarily after December 19, 2009, the date otherwise required for notification of COBRA subsidies.

If you have questions or would like additional information about the COBRA subsidy extension, please feel free to contact Brian Dougherty at 215-587-5919 or bdougherty@postschell.com

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