



COBRA SUBSIDY EXTENDED AGAIN

On March 2, 2010, the President signed the Temporary Extension Act of 2010, which, among other things, extends the 65% COBRA premium subsidy through March 31, 2010. The subsidy was originally provided through December 31, 2009, under the 2009 stimulus act (the American Recovery and Reinvestment Act or “ARRA”), and was previously extended through February 28, 2010, via the 2010 Department of Defense Appropriations Act. (For information regarding the original COBRA subsidy and the previous extension, please see our previous E*Bulletins from [January 2010](#), [March 2009](#), and [February 2009](#)).

Employers should continue to use their current COBRA qualifying event notices for terminations through March 31, 2010, unless guidance to the contrary or new model notices are issued by the Department of Labor (“DOL”). Employers’ current forms should already reflect the availability of the subsidy and other recent changes to COBRA coverage (a model General COBRA Notice and an updated model Premium Assistance Extension Notice are [available online](#)).

It is not expected that additional notices will have to be provided to employees who were involuntarily terminated prior to February 28, 2010 (assuming they were adequately notified prior to the latest extension). That is because the most recent extension, unlike the previous extension, did not provide additional rights to current COBRA participants (with one possible exception, noted below).

“Clarification” of eligibility for those terminated after a reduction in hours

Although a reduction in hours still does not qualify an individual for the COBRA subsidy, the Temporary Extension Act of 2010 provides a “clarification” of the subsidy when such an individual is involuntarily terminated. The Temporary Extension Act states that an employee who loses (or will lose) eligibility for health benefits due to a reduction in hours during the time that the COBRA subsidy is in effect (currently between September 1, 2008, and March 31, 2010), and who is involuntarily terminated between March 2, 2010, and March 31, 2010 (unless extended), is potentially eligible for the COBRA subsidy. This is the case even if the employee did not originally elect COBRA, or let his or her COBRA coverage lapse, after the reduction in hours. Employers must provide such employees with a notice of their right to elect COBRA coverage within 60 days of the date of the involuntary termination (assuming such termination was on or after March 2, 2010). It is not known at this time how notification of such employees should be handled.

It is expected that the DOL will provide additional information regarding COBRA and subsidies for employees who transition from full-time to part-time and are ultimately terminated involuntarily. We, too, will continue to provide updates regarding the ever-changing COBRA landscape as events warrant. For example, legislation still pending in Congress would extend the subsidy to those involuntarily terminated through December 31, 2010, but with a shorter subsidy period of 12 months (rather than the maximum 15 months of subsidies available under current law and the most recent extension).

For additional information and questions regarding these issues, please contact one of the members of our Employee Benefits, ERISA & Executive Compensation practice listed below or your Jones Walker relationship attorney.

– [Timothy P. Brechtel](#) and [Susan K. Chambers](#)



Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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