



COBRA SUBSIDY EXTENDED;

DEPARTMENT OF LABOR ISSUES REVISED MODEL NOTICES

On December 19, 2009, President Obama signed the 2010 Department of Defense Appropriations Act. Included in this Act was an extension of the length and availability of the 65% premium subsidy provided to COBRA participants under the 2009 stimulus act (the American Recovery and Reinvestment Act or “ARRA”). (For information regarding the original COBRA subsidy, please see our previous E*Bulletins from [March 2009](#) and [February 2009](#)).

Key Changes

The recent extension makes the subsidy available to those who are involuntarily terminated on or before February 28, 2010 (rather than December 31, 2009), and otherwise meet the applicable requirements. Additionally, the maximum length of the subsidy was increased from 9 months to 15 months. Those who reached the end of the 9-month subsidy period but stayed enrolled in COBRA coverage are entitled to premium rebates or credits from their employer. Finally, those who reached the end of the 9-month subsidy period and let their coverage lapse have the opportunity to retroactively re-enroll at the lower subsidized rate.

Notice Requirements

In light of the extension, employers and/or COBRA administrators must revise the notices that are given to new COBRA participants and provide updated notices to certain current COBRA participants (some of whom may have already received previous updates following the passage of ARRA). The Department of Labor (“DOL”) provided updated notices on their website in January 2010.

First, the General COBRA Notice should be updated to reflect the new subsidy terms. This notice is provided to each qualified beneficiary who has not yet received a COBRA election notice and has a qualifying event during the period that begins on September 1, 2008, and ends with February 28, 2010 (regardless of the type of qualifying event).

Second, the following participants should be provided with an updated Premium Assistance Extension Notice on or before February 17, 2010: (1) participants who were receiving COBRA premium assistance on or after October 31, 2009; (2) participants who experienced a termination of employment on or after October 31, 2009, and were not provided the updated General Model Notice; and (3) participants whose COBRA subsidy expired under prior law (November 2009 or later) and the individual did not make payment for subsequent periods of coverage, made a payment that was less than the full premium, or made payment of the full premium in order to continue coverage (they must be informed of their potential ability to re-enroll in COBRA or receive a rebate or credit towards their premiums). Retroactive reinstatement (for those who dropped coverage after expiration of the original subsidy) is available until February 17, 2010, or, if later, 30 days from the date that the notice is provided.

A revised model General COBRA Notice and an updated model Premium Assistance Extension Notice are available on the DOL website or by [clicking here](#).



Assistance Eligible Individual Determination Date

Under the new law, the relevant date for determining whether an individual is eligible for premium assistance was changed from the date that COBRA continuation coverage starts to the date of the qualifying event. For example, if a participant is terminated on February 28, 2010, and the participant's COBRA coverage does not begin until March 1, he or she will nevertheless be eligible for the subsidy (provided all requirements are met—e.g., the event must be an involuntary termination and the qualified beneficiary must elect continuation coverage).

Pending legislation includes additional extensions and revisions, so employers should stay tuned for additional COBRA changes and the potential need to provide additional notices.

Additional information is provided on the DOL website or by [clicking here](#).

– [*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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