



**NEW COBRA NOTICES DUE BY
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On December 19, 2009, President Obama signed legislation extending the federal COBRA subsidy benefits that were created last year under the American Recovery and Reinvestment Act of 2009 ("ARRA"). This legislation will require HR professionals to be familiar with the new rules, create and send new COBRA notification forms (or ensure that their third-party COBRA administrators comply with the notice procedures) and, in some cases, provide refunds to eligible COBRA participants who paid full COBRA premiums and will now be entitled to reduced payments.

Under the new legislation, the deadline for eligibility for COBRA subsidy benefits was extended from December 31, 2009 to February 28, 2010. This means that eligible employees who suffer a "qualifying event" prior to February 28, 2010 will be entitled to the subsidy. The other basic rules for eligibility, including the personal income ceilings, remain unchanged.

An even greater benefit was provided to COBRA participants under the new legislation by expanding the period of available subsidy from nine months to 15 months. Not only does the provision nearly double the length of the availability of the subsidy, it applies retroactively, meaning that COBRA participants who were eligible for COBRA subsidy last year can secure new subsidy benefits if they remain eligible for COBRA.

Both of these changes require employers or their third-party benefit administrators to issue a host of new notices to ensure that COBRA participants are properly advised of the new rules and to allow them to take advantage of the benefits, including the retroactive coverage.

The following are additional highlights of the COBRA subsidy extension:

1. Background of COBRA Subsidy And General Eligibility Requirements: In general, COBRA allows employees, who lose their health coverage due to certain events, the ability to continue their group health coverage for up to 18 months (or longer in cases of a disability). COBRA premiums can be as much as 102% of the employer's cost of the coverage, which has historically created great hardships for displaced workers who have limited means to pay for the higher premiums to maintain health coverage for themselves and their families. This became an even greater and more widespread problem as a result of the economic recession of 2008 and 2009, in which millions of employees lost their jobs and their insurance coverage. One of President Obama's first acts was to enact ARRA, in February of 2009, which provided that "assistance-eligible individuals" were entitled to receive a 65% subsidy on their COBRA continuation coverage premiums for up to nine months upon electing COBRA coverage.

An "assistance eligible individual is an employee or a member of an employee's family who: (1) lost group health coverage due to an involuntary termination of employment from September 1, 2008 through February 28, 2010 (the former deadline was December 31, 2009); and (2) timely elects COBRA coverage. The premium reduction eligibility ends if the individual becomes eligible for coverage under any other group health coverage or for Medicare benefits.

The plan must treat assistance eligible individuals who pay 35% of the COBRA premium otherwise payable for continuation coverage as having paid the full amount of the group health premium. The employer or, in certain circumstances, the insurer that absorbs the 65% reduction, is entitled to reimbursement of that amount through a credit applied against its payroll taxes.

2. Expanding Coverage: The premium reduction, which was initially available for nine months, is now available for up to 15 months. This reduction applies to periods of coverage beginning on or after February 17, 2009. Because the expansion from nine months to 15 months is retroactive, assistance eligible individuals who exhausted their nine months of reduced premium continuation coverage prior to December 19, 2009 (the date the changes were enacted) may now receive an additional six months of subsidy, up to a total of 15 months.

Assistance eligible individuals who paid the full COBRA premium after exhausting nine months of the subsidy will be entitled to a refund of the difference between the full premium and the 35% premium. In addition, individuals who dropped COBRA by failing to pay the full premium after the nine months of subsidized coverage who remain eligible for the premium reduction must be provided the opportunity to pay the reduced premium rate. The reduced premiums must be paid by February 17, 2010, or within 30 days after receiving notice of the expanded coverage, whichever is later.

3. Notice Requirements: One of the greatest administrative impacts of the new rules is the requirement for new notices. Employers and health plans must now provide revised COBRA Notices as follows:

a. *General Notice:* A new General Notice must be provided to all qualified beneficiaries who experienced a qualifying event at any time from September 1, 2008 through February 28, 2010, and who have not yet been provided an election notice. The new Notice must contain updated information regarding the COBRA subsidy as well as all standard information required in a COBRA election notice.

b. *Premium Assistance Extension Notice:* A Premium Assistance Extension Notice must be provided to certain individuals who have already been provided a COBRA election notice that did not include information on the new changes. The new Notice must provide updated information about the changes made to the COBRA subsidy.

Unless they were already provided a timely updated General Notice, by February 17, 2010 a Premium Assistance Extension Notice must be provided to anyone who was an assistance eligible individual or had a qualifying event on or after October 31, 2009 through December 19, 2009.

Employers or health plans must also provide Premium Assistance Extension Notices to those individuals who are retroactively eligible to for the premium reduction or entitled to a refund. This Notice must be provided within 60 days after the date on which the assistance eligible individual exhausted his or her nine months of reduced premium coverage. In the event that an individual is entitled to multiple notices, an employer may provide a single notice that includes all the necessary information as long as the notice is provided by the earliest date required.

In summary, the COBRA subsidy extension rules create new obligations on HR professionals and benefit administrators. Because of the overlap of the original ARRA rules, and the new extension rules, the Notice forms add potential confusion to the already complicated process of providing and securing COBRA benefits. Moreover, the various dates applicable to the Notices and subsidy eligibility are difficult to understand and manage properly. Finally, the original eligibility requirements for the COBRA subsidy must continue to be enforced.

Due to the persistent national economic woes, Congress is currently reviewing legislation to provide additional extensions to the COBRA subsidy. If this occurs, COBRA notices will again need to be modified and new deadlines adhered to. It is critical that employers and plan administrators continue to keep a close eye on further developments in this area.

Further information on the recent changes to the COBRA subsidy and copies of model notices may be obtained at www.dol.gov/ebsa.

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