



Congress Extends COBRA Subsidy Provisions

December 2009

*ON DECEMBER 19, 2009 PRESIDENT OBAMA SIGNED THE DEPARTMENT OF DEFENSE APPROPRIATIONS ACT OF 2010 WHICH CONTAINS PROVISIONS TO EXTEND AND EXPAND THE COBRA SUBSIDY PROGRAM UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009. THIS **INSIGHTS** WILL SUMMARIZE THE KEY PROVISIONS OF THE LEGISLATION AND THE STEPS PLAN ADMINISTRATORS MUST TAKE TO COMPLY WITH THE NEW REQUIREMENTS.*

Eligibility

In general, employees who are involuntarily terminated through **February 28, 2010** will be eligible for the COBRA subsidy. Unlike the original law, eligibility for the subsidy will include those employees who are involuntarily terminated through February 28, 2010, regardless of when the COBRA period of coverage begins. For example, an employee who is involuntarily terminated on February 28, 2010 and whose COBRA period of coverage begins on March 1, 2010, would still be considered an Assistance Eligible Individual and qualify for the federal subsidy.

Subsidy Amount

The federal government will continue to subsidize **65%** of the required COBRA premium. Eligible employees will only be required to pay 35% of the premium in order to maintain coverage. Recovery of the subsidy will continue to be captured as a payroll tax credit for employers subject to federal COBRA and insurance carriers will be responsible for paying the subsidy (and submitting for reimbursement) for small employers subject to state continuation laws.

How Long Will The Subsidy Last?

The Appropriations Act also extended the maximum subsidy period from **9 months to 15 months**. Similar to the original Act, the subsidy will end on the earlier of:

- ◆ 15 months of subsidized coverage,

- ◆ The end of the maximum period of continuation coverage under COBRA or a state continuation program,
- ◆ Eligibility for other group coverage, or
- ◆ Eligibility for Medicare.

The Transition Period

Assistance Eligible Individuals who failed to pay the full COBRA premium and lost coverage when the original subsidy expired as of November 30, will be able to reinstate COBRA coverage by paying 35% of the required premium no later than 60 days after enactment (February 17, 2010) or 30 days after the required notification is issued, if later. Coverage will be retroactive to the date the loss of coverage occurred. This reinstatement is only available to those individuals who maintained COBRA coverage throughout the original 9-month subsidy period.

Employees who paid the full premium in December will be entitled to a credit against future COBRA premiums or a refund if no further coverage is continued under the group health plan.

Required Notification

Plan Administrators are required to issue an additional notice to explain the new requirements of the Appropriations Act to:

- ◆ Any beneficiary who was an Assistance Eligible Individual on or after **October 31, 2009** or an employee who experienced a Qualifying Event (consisting of termination of employment) on or after **October 31, 2009**, and
- ◆ Received a COBRA Qualifying Event notice which only contained the original subsidy provisions (i.e. the 9-month limit).

This additional notice must be issued no later than

Insights

February 17, 2010 (60 days after the date of enactment).

The updated COBRA subsidy provisions must now be included in the notices for individuals who experience a Qualifying Event on or after December 19, 2009. These Qualifying Event notices must be issued within the appropriate federal or state continuation timeframes.

The Department of Labor, Employee Benefits Security Administration, will post to its website, www.dol.gov/cobra, information on new notice requirements, updated guidance, fact sheets, and frequently asked questions as the information becomes available.

Action Steps

Employers should continue to administer the subsidy program for employees who are involuntary terminated through February 28, 2010 making sure that Qualifying Event notices contain the updated provisions to extend the subsidy for 15 months. Employers should check with COBRA administrators to ensure the additional notice requirements will be properly addressed. Employers who manage the COBRA process internally will have to:

- ◆ Identify (i) all Assistance Eligible Individuals on or after October 31, 2009, and (ii) employees who terminated employment (voluntary or involuntary) on or after October 31, 2009, who have not received information about the updated COBRA provisions,
- ◆ Issue a notice within 60 days to these individuals explaining the new provisions of the law,
- ◆ Allow those employees who dropped coverage at the conclusion of the 9-month subsidy the opportunity to re-enroll for coverage within 60 days of enactment or 30 days after receiving the new notice, if later, and
- ◆ Update Qualifying Event notices to incorporate the new provisions of the Act for use on and after December 19, 2009.

ADDITIONAL INFORMATION

For specific questions concerning information contained in this *Insights*, please contact your Chernoff Diamond consultant.

Information contained in this *Insights* is not intended to

render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance in respect of matters of law, tax and related regulation.

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