



Congress Extends COBRA Subsidy Provisions Once Again

March 2010

*EARLIER THIS MONTH, CONGRESS AND THE PRESIDENT PASSED THE **TEMPORARY EXTENSION ACT OF 2010** ("The Act") WHICH EXTENDS THE ELIGIBILITY FOR COBRA PREMIUM ASSISTANCE FOR INVOLUNTARILY TERMINATED PARTICIPANTS THROUGH MARCH 31, 2010. THIS ACT ALSO CREATED A NEW QUALIFYING EVENT, A NEW NOTICE REQUIREMENT AND PENALTIES FOR FAILURE TO EXPEDITIOUSLY GRANT PREMIUM ASSISTANCE AFTER A DEPARTMENT OF LABOR FAVORABLE APPEAL RULING. THIS **INSIGHTS** WILL SUMMARIZE THE KEY PROVISIONS OF THE LEGISLATION. IT IS EXPECTED THAT FURTHER LEGISLATION TO EXTEND THE ELIGIBILITY PERIOD THROUGH DECEMBER 31, 2010 WILL BE ENACTED.*

SUBSIDY EXTENDED

Employees who are involuntarily terminated through **March 31, 2010** will be eligible for the 65% COBRA subsidy for a period of 15 months. In general, it is our understanding that each state must take legislative action to extend these provisions under State Continuation laws for small groups (1 – 19 lives) unless automatic adjustment is written into state continuation laws. As of this writing, many state continuation plans do not appear to reflect these enhancements.

NEW QUALIFYING EVENT

The Act will now extend the COBRA subsidy to employees who experience a reduction in hours which causes the loss of health coverage. In order to qualify for premium assistance the following conditions must be met:

- ◆ The reduction in hours (voluntary or involuntary) must occur within the eligibility period which runs from September 1, 2008 – March 31, 2010, AND
- ◆ The individual must be involuntarily terminated on or after March 2, 2010.

A special election period has been established for this new category of Assistance Eligible Individual (AEI). A

notice must be issued to those individuals who meet BOTH criteria noted above, regardless of whether the individual had elected COBRA (or subsequently dropped COBRA) on or after the initial reduction in hours. The notice must be issued within 60 days of the involuntary termination of employment. The following will apply to these AEIs:

- ◆ The COBRA coverage period (18 months) is measured from the original Qualifying Event – the reduction in hours. Therefore, the period of time between the reduction in hours and the involuntary termination will reduce the total period of COBRA coverage.
- ◆ Premiums do not have to be paid for any periods of coverage between the reduction in hours and involuntary termination.

NEW COBRA PENALTY

All employees have a right to appeal to the Department of Labor when a request to be treated as an AEI has been denied by the plan sponsor. If the Department of Labor determines that the employee meets the AEI criteria, the plan sponsor must honor the favorable ruling within 10 days of notification. The Act further ensures an employee's rights by:

- ◆ Allowing the employee or the Department of Labor to sue the plan sponsor to enforce the favorable determination, and
- ◆ Assessing a \$110 per day penalty on the plan sponsor or health insurer who fails to comply with the appeal determination within 10 days of notification.

The Department of Labor, Employee Benefits Security Administration, will update its website, www.dol.gov/cobra, as the information becomes available.

Insights

Action Steps

Employers should continue to administer the COBRA subsidy program through March 31, 2010 (and be prepared to extend this through December 2010 when appropriate legislation is later passed). In addition, employers should review personnel records to identify individuals who experienced a reduction in hours (which caused the loss of health coverage) beginning September 1, 2008 and be prepared to issue a notice if these employees subsequently experience an involuntary termination of employment on or after March 2, 2010.

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.

Chernoff Diamond provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management and qualified and non-qualified retirement plans.

For additional information about our services please contact us at (516) 683-6100 or via e-mail at mail@chernoffdiamond.com.