



One Minute Memo®

COBRA Subsidy Eligibility Period Extended Again

On March 2, 2010, President Obama signed the Temporary Extension Act of 2010 (the "Act"), which extends the COBRA subsidy eligibility period to include individuals who are involuntarily terminated on or before March 31, 2010. The Act also makes other changes to the COBRA subsidy:

- **Reduction of Hours.** The Act provides that individuals who had a reduction of hours between September 1, 2008 and March 31, 2010, followed by an involuntary termination of employment on or after March 2, 2010, shall be treated as incurring a qualifying event on the date of termination of employment. As a result, these individuals will be eligible for the COBRA subsidy. The period of COBRA continuation coverage, however, is determined as though the qualifying event was the reduction of hours. Group health plans must notify affected individuals within sixty (60) days following their termination of employment of their right to the COBRA subsidy.
- **Employer Discretion.** The Act clarifies that the employer's determination that a qualifying event was the individual's involuntary termination of employment will be deemed accurate, provided that the determination is reasonable and the employer maintains supporting documentation.
- **Enforcement.** Finally, if the Secretary of Labor or the Secretary of Health and Human Services determines that an individual is eligible for the COBRA subsidy, the Act provides that either the individual or the Secretary may bring a civil action to enforce that determination. In addition, the Secretary may assess a penalty against the plan sponsor or health insurance issuer of up to \$110 per day for each failure to comply with the Secretary's determination.

While the Act only extended the COBRA subsidy eligibility period through March 31st, the Senate is currently considering an amendment to the Tax Extenders Act of 2009 (as passed by the House of Representatives last December) that would extend eligibility through December 31, 2010.

If you have any questions regarding the COBRA extension, please contact the Seyfarth Shaw attorney with whom you normally work or any [Employee Benefits attorney](#) on our website.