



## Management Alert

# COBRA Subsidy Extension and New Notice Requirements

As forecast in our December 7, 2009 One Minute Memo titled "*COBRA Subsidy May Be Extended Before Year End*," on December 19, 2009 the President signed the Department of Defense Appropriations Act for Fiscal Year 2010 ("Defense Act") extending the COBRA subsidy.

The legislation extends both the period of eligibility and the length of the subsidy. The amount of the subsidy remains at 65%. It also provides for a retroactive application of the subsidy extension and includes additional notice requirements that employers must grapple with early in the new year.

	Arra COBRA Subsidy	Defense Act COBRA Subsidy Extension
<b>Maximum Length of Subsidy</b>	9 months	15 months
<b>Period During Which Involuntary Termination of Employment Must Occur</b>	September 1, 2008 to December 31, 2009	September 1, 2008 to February 28, 2010
<b>Subsidy Percentage</b>	65%	65%

### Eligibility Period Extended

The current COBRA subsidy program under the American Recovery and Reinvestment Act (ARRA) provides a nine-month subsidy for COBRA continuation coverage to individuals who are involuntarily terminated from employment AND lose coverage as a result of that termination on or after September 1, 2008 through December 31, 2009. Under the Defense Act, a 15-month subsidy for COBRA continuation coverage will be available to individuals who are involuntarily terminated from employment on or after September 1, 2008 through February 28, 2010 and are eligible for COBRA coverage related to the involuntary termination.

Thus, under the Defense Act, only the termination from employment, not the loss of coverage, must occur on or before February 28, 2010. For example, an individual who is involuntarily terminated on February 2, 2010 and has employer-provided coverage through the end of February will be eligible for the subsidy even though the loss of coverage does not occur until March 2010—after the expiration of the eligibility period. This nuanced change is meant to take care of a concern that we had addressed in the last One Minute Memo that employees who would have lost coverage on January 1, 2010 due to a December involuntary termination would not have been eligible for the ARRA COBRA subsidy.

## Subsidy Extension is Retroactive

The Defense Act provides for the retroactive application of the subsidy extension. Any individual who previously had the federal COBRA subsidy but exhausted it after nine months will have an opportunity to have COBRA coverage at the subsidized rate for an additional six months. (The law does not extend the maximum period of COBRA continuation coverage that is otherwise required by COBRA.) If an individual continued on COBRA by paying the full COBRA premium after exhausting the nine-month subsidy, the excess premium amount paid must be refunded or credited to the individual. If the individual terminated his or her COBRA coverage after the nine-month subsidy period was exhausted, the individual will have the chance to restart COBRA at the subsidized rate retroactive to when he or she stopped paying for COBRA. To continue their coverage they must pay 35% of premium costs by February 17, 2010 or, if later, 30 days after notice of the extension is provided by their plan administrator.

## New Notice Requirements

Under the notice provisions included in the Defense Act, any individual who was eligible for the ARRA COBRA subsidy on or after October 31, 2009, or who is voluntarily or involuntarily terminated on or after that date, must be provided a notice with information regarding the subsidy extension. This notice must be provided no later than February 17, 2010. (Notices to those who become eligible for the COBRA subsidy after December 19, 2009 must be given in accordance with the timing under general notification rules of COBRA.)

In addition, any individual who was eligible for the ARRA COBRA subsidy, but either was dropped from coverage for failure to pay a COBRA premium or who paid the full COBRA premium after they exhausted their ARRA COBRA subsidy, must be provided with information regarding the Defense Act extension and the right to make retroactive premium payments at the federally subsidized rate. This notice must also be provided by February 17, 2010.

In order to avoid issuing a refund or applying a credit, employers may want to promptly notify those individuals whose subsidy expired but who still have the chance to pay their COBRA premiums for November and/or December of the extension so that they may continue COBRA on the reduced premium basis. The government is expected to develop model notices for use by employers as it did for the ARRA COBRA subsidy earlier in 2009.

Finally, COBRA may be extended yet again in 2010. An extension to June 30, 2010 has been proposed in the Jobs for Main Street Act, 2010, which is currently being debated in Congress.

*For more information, please contact the Seyfarth attorney with whom you work or any Employee Benefits attorney on our website: [www.seyfarth.com/EmployeeBenefits](http://www.seyfarth.com/EmployeeBenefits).*



**Breadth. Depth. Results.**

[www.seyfarth.com](http://www.seyfarth.com)