

Temporary Extension of the ARRA COBRA Premium Subsidy

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On March 2, 2010, another temporary extension of the ARRA COBRA premium subsidy was enacted. Congress is already debating a further extension, so be prepared for more updates as the law continues to change. For now, the COBRA subsidy will be available to employees whose employment is involuntarily terminated on or before March 31, 2010.

More problematically, the COBRA subsidy is now available to certain individuals who lost coverage due a reduction in hours. Specifically, the subsidy is now available to an employee and/or family member if:

- the individual lost health coverage due to reduction in hours between September 1, 2008 and March 31, 2010; and
- the employee had an involuntary termination of employment between March 2, 2010 and March 31, 2010. (Remember that the March 31, 2010 dates may change.)

The extension does not provide a COBRA subsidy for individuals who lost coverage due to a reduction in hours, but were terminated prior to March 2, 2010.

For persons who fall into the newly-covered category, the COBRA subsidy is available regardless of whether the individual elected (or continued to maintain) COBRA coverage after the employee's reduction in hours. This means employers will be required to track all employees who lost coverage due to a reduction in hours after September 1, 2008 to determine whether any of them is

involuntarily terminated from employment during the March 2010 window. If so, the employer will have to generate appropriate COBRA notices to individuals who might not be covered by your health plan at the time of termination.

The reduction/termination provision does not extend the 18 month COBRA period. The COBRA period continues to run from the original reduction in hours and not the subsequent termination of employment. In fact, if more than 18 months pass between a reduction in hours and the involuntary termination of employment, the individual probably does not have any additional COBRA rights as a result of the new legislation. We are waiting for official confirmation that the 15-month subsidy period runs from the termination of employment rather than from the original reduction in hours.

Employers will be required to update their COBRA notices to deal with the extended dates and will need to notify any reduction/termination employees of their right to (re)elect COBRA coverage on a subsidized basis after their involuntary termination. We expect the Department of Labor (DOL) to provide guidance on the new notice obligations.

Employer CHIP Notice Update

In a February Client Alert, we mentioned that, while Medicaid and CHIP premium assistance is only available to benefits-eligible employees, it appears that the Employer CHIP Notice is to be sent to all employees who reside in one of the 40

states listed in the Notice regardless of whether they are eligible for your medical plan. We have since confirmed that the DOL does in fact expect employers to send the Employer CHIP Notice to all employees (not just benefits-eligible employees) who reside in listed states. Employers also have the option to

simply send the Model CHIP Notice to all employees regardless of residence.

The DOL has not yet addressed notice responsibilities where an employer's sole health benefits are through a multiemployer plan.

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