

COBRA Subsidy Extended to 15 Months

By Steven R. Gerlach | 28 December 2009

On December 21, 2009, President Obama signed into law the Department of Defense Appropriations Act of 2010 (the “Act”), which, among other things, extends the COBRA premium subsidy first provided for in the American Recovery and Reinvestment Act (“ARRA”). The Act also created new transition rules and notification requirements.

Maximum Subsidy Period Extended To Fifteen Months

Under the ARRA, the COBRA premium subsidy applies until one of three events occurs: (1) the assistance eligible individual (“AEI”—that is, former employee, spouse or dependent) becomes eligible for coverage under another group health plan or Medicare, (2) nine months after the subsidy first applies to the AEI or (3) the AEI becomes ineligible for COBRA coverage.

The Act extended the term in (2) to fifteen months. As a result, an AEI may receive the subsidy for up to fifteen months.

Window of Eligibility Extended Through February 28

Under the ARRA, an AEI was only eligible for the subsidy if he or she was involuntarily terminated between September 1, 2008 and December 31, 2009. Under the Act, the eligibility period is extended through February 28, 2010.

New Transition Rules

The Act creates a transition period for any AEI whose original subsidy expired prior to December 19, 2009 and to whom the subsidy now applies due to the 6-month extension. The transition period begins on the day the AEI’s COBRA subsidy expired. If such AEI was covered during the period of coverage immediately prior to the transition period, that AEI may pay his or her 35% share of the continuation premium retroactively to cover the transition period—no later than February 17, 2010 or, if later, 30 days after receiving notice of the extension from the plan administrator. The transition period will end when the AEI makes retroactive payment or, if no payment is made, on the later of February 17, 2010 or 30 days after receiving notice of the extension from the plan administrator.

An AEI who mistakenly pays the full COBRA premium for any period of coverage during his or her transition period is to be provided with premium credits or a refund, following procedures in the ARRA.

Notice Requirements

The Act specifies three new notice requirements:

1. For any individual who was an AEI or experienced a qualifying event between October 31, 2009 and December 19, 2009, the plan administrator must provide an additional notice with information regarding the extension. This additional notice must be made no later than February 17, 2010.

2. For any individual who experienced a qualifying event after December 19, 2009, notice containing information about the extension must be provided consistent with the timing provisions under the ARRA.

3. For an individual who was covered under COBRA for the period of coverage immediately prior to his or her transition period and did not timely pay the premium for any period of coverage during his or her transition period (likely because the individual could not afford the full premium), the plan administrator must provide notice of the extension under the Act. Such notice must include information on the ability to make retroactive premium payments with respect to the transition period. The notice must be provided within the first 60 days of the individual's transition period.

The Department of Labor is expected to release a model notice.

We would be pleased to assist you in complying with these new provisions. For more information in Maine, please contact Steve Gerlach of Bernstein Shur at (207) 774-1200. In New Hampshire, contact Karen Aframe at (603) 623-8700.