

News from our Compensation & Benefits Group

COBRA Subsidy Expanded and Extended

On December 19, 2009, President Obama signed into law the Department of Defense Appropriations Act, 2010 (the “Appropriations Act”), provisions of which extend and expand the program that subsidizes continued health care coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (or similar state continuation coverage laws) (“COBRA”) for involuntarily terminated employees. That program, initially enacted as part of the American Recovery and Reinvestment Act of 2009 (“ARRA”) and as more fully described in a prior *Cooley Alert*, provides that certain employees whose employment is involuntarily terminated between September 1, 2008 and December 31, 2009 can continue health coverage under COBRA by paying only 35% of the ordinary COBRA premiums for up to nine months. The insurer, the employer or the health plan pays the remaining 65%, which is recovered from the federal government through a credit against payroll tax liabilities or through direct reimbursement.

Expansion and Extension of COBRA Subsidy Program

The Appropriations Act extends the COBRA subsidy program by changing the eligibility deadline from December 31, 2009 to February 28, 2010. This broadens the group of individuals eligible for the subsidy to include employees who are involuntarily terminated after December 31, 2009 but on or before February 28, 2010. The Appropriations Act also clarifies that an individual will be eligible for the subsidy if the qualifying event that makes such individual

eligible for COBRA coverage occurs on or before February 28, 2010 (rather than requiring that such individual actually be eligible for COBRA coverage on or before February 28, 2010).

The Appropriations Act expands the maximum period of time for which an eligible individual may receive subsidized COBRA coverage from nine months to fifteen months. Individuals who have already received subsidized COBRA coverage for nine months will be entitled to an additional six months of subsidized COBRA coverage.

Transition Period and Required Notices

For an individual to whom the subsidy extension now applies, there is a “transition period” consisting of any period of coverage if (i) such period begins before December 19, 2009 and (ii) the COBRA subsidy applies to such period by reason of the Appropriations Act. Any period during the transition period for which the applicable premium has been paid is treated as a period of coverage, irrespective of any failure to timely pay the applicable premium. Any individual who did not timely pay the premium for any period of coverage during the transition period or who paid the full (i.e., unsubsidized) premium for such period is to be notified by the health plan administrator of the changes to the subsidy program enacted by the Appropriations Act. Such notice must be provided within the first 60 days of an individual’s transition period and must include information on the ability of such individual to elect to

make retroactive premium payments with respect to the transition period in order to maintain COBRA coverage, as further described below.

If an individual dropped COBRA coverage upon the earlier expiration of the subsidy (i.e., no COBRA coverage in December 2009 due to the November 30, 2009 expiration of the nine month subsidy period), such individual, if still otherwise eligible for COBRA, may elect to pay premiums retroactively to maintain COBRA coverage. Such individual shall be treated as having timely paid the premium amount if the individual (i) was covered under COBRA for the period of coverage immediately preceding such transition period and (ii) pays, not later than February 19, 2010 (i.e., 60 days from the enactment of the Appropriations Act) or, if later, 30 days after the new notice is provided, the amount of the subsidized premium.

If an individual pays the full (i.e., unsubsidized) amount of the COBRA premium during the individual’s transition period,

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the excess amount paid can be credited against future months of COBRA coverage or can be refunded to such individual.

Finally, notice of the extended COBRA subsidy must be provided no later than February 19, 2010 to any individual who was eligible for the subsidy on or after October 31, 2009. In the case of a COBRA qualifying event occurring after December 19, 2009, such notice must be provided pursuant to the COBRA timeframe for providing the qualifying event notice.

It is believed that the Department of Labor (“DOL”) will issue model forms for use in notifying the individuals described above of the extension of the COBRA subsidy period as well as the opportunity to elect to make retroactive premium payments. The DOL maintains a [website](#) related to the COBRA subsidy and periodically updates the website with regulatory guidance as it is released. If model forms are provided by the DOL, the forms will be posted there.

As a final note, other legislation is still pending in Congress that could further extend and expand the COBRA subsidy program. If that legislation is passed, we will distribute an Alert that describes the additional revisions to the subsidy program and any resulting notice requirements.

If you have questions about this *Alert*, please contact one of the attorneys in the Compensation & Benefits Group listed above.

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