

Employee Benefits Briefing

COBRA Subsidy Extension

On December 16 and December 19, respectively, the U.S. House of Representatives and the U.S. Senate passed a temporary extension to the COBRA subsidies that were originally enacted in the American Recovery and Reinvestment Act of 2009 (ARRA).¹ This new legislation is expected to be signed by President Obama by the end of 2009, and requires immediate attention by employers, as the original ARRA COBRA subsidies either have expired or are in the process of expiring. Also, this legislation requires notification to certain individuals within 60 days after the legislation is signed into law.

Overview

The legislation is intended principally to accomplish the following:

- Extend the ARRA COBRA subsidy eligibility period to February 28, 2010;
- Extend the maximum ARRA COBRA subsidy period to 15 months; and
- Require notification to certain Assistance Eligible Individuals within 60 days of enactment to enable individuals who have dropped COBRA coverage due to cost concerns to retroactively restart coverage at subsidized rates.

Eligibility Period

The current eligibility period for the ARRA COBRA subsidy ends on December 31, 2009. The legislation will extend this eligibility period to February 28, 2010, so that employees involuntarily terminated on or before February 28, 2010 will be eligible for the ARRA COBRA subsidy.

In addition, the new law clarifies Congress's intent regarding eligibility at the cusp. The original eligibility criteria for the ARRA COBRA subsidy required both (i) a qualifying event (consisting of termination of employment) plus (ii) loss of coverage within the eligibility period. The new law requires only that the qualifying event (consisting of termination of employment) occur within the eligibility period.

For example, an employee who is involuntarily terminated in February 2010, and whose regular medical coverage continues through the end of February 2010 (a common plan design), will be eligible for the ARRA COBRA subsidy beginning March 1, 2010.

¹ The extension is contained in the Department of Defense Appropriations Act, 2010 (H.R. 3326). The original ARRA COBRA subsidies were discussed in the Vedder Price Employee Benefits Briefings dated February 17, 2009 <http://www.vedderprice.com/benefits0209/>, March 25, 2009 <http://www.vedderprice.com/benefits0309/> and April 3, 2009 <http://www.vedderprice.com/benefits0409/>.

Maximum Subsidy Period

The legislation will extend the maximum period of ARRA COBRA subsidies from 9 months to 15 months. For example, if an individual became eligible for the ARRA COBRA subsidy on July 1, 2009, the maximum subsidy period would have originally ended on March 31, 2010. Under the legislation, the ARRA COBRA subsidy would continue for this individual until September 30, 2010.

Retroactive Payments/Coverage

If an Assistance Eligible Individual previously exhausted his or her ARRA COBRA subsidy and stopped paying premiums after the subsidy was exhausted, that individual may restart paying for COBRA at subsidized rates (and reinstate coverage) retroactively to when they stopped paying for COBRA.

For example, as has been widely reported, the initial ARRA COBRA subsidy period expired for many individuals on December 1, 2009. If the Assistance Eligible Individual dropped coverage at that point due to cost (i.e., coverage did not end due to coverage under another group health plan or the occurrence of events that would otherwise cut off COBRA), the individual may now elect to pay the subsidized COBRA premium and be reinstated in his or her COBRA coverage retroactive to December 1, 2009. This retroactive coverage is similar to the retroactive coverage that was part of the original ARRA statute.

Assistance Eligible Individuals who exhausted their COBRA subsidy and started paying full COBRA premiums can receive refunds/premium credits from employers for the extra amounts that they paid.

Notification Requirements

Employers will be required to notify individuals who were Assistance Eligible Individuals on or after October 31, 2009 that they may continue to pay for their COBRA at subsidized rates for up to 15 months (in total) and that they may reinstate their COBRA coverage if they had stopped paying their COBRA premiums after the subsidy expired. **This notice is required to be delivered within 60 days after the legislation is enacted.** Assuming the legislation is enacted before the end of 2009, employers will need to provide this notice by the end of February 2010.

As with the original ARRA statute, we expect that the government will develop model notices for use by employers.

If you have any questions regarding this COBRA subsidy extension, please contact **Philip L. Mowery** (312-609-7642), **Paul F. Russell** (312-609-7740), **Jessica L. Winski** (312-609-7678) or any other employee benefits attorney with whom you have worked if you have any questions.

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