

CLIENT ALERT: COBRA Subsidy Program Extended and Clarified Through Federal Legislation

The COBRA federal subsidy program, initially established in April 2009, has been extended for a second time. On March 2, 2010, President Barack Obama signed into law legislation which amends a federal program created to provide subsidies to eligible individuals receiving continuation health care coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

Through the enactment of the Temporary Extension Act of 2010 ("TEA"), the eligibility period for the federal COBRA subsidy was extended through March 31, 2010. Additionally, TEA provides protection for employers determining that an employee was involuntary terminated, and it also clarifies how the COBRA subsidy applies to individuals suffering a reduction of work hours.

Extension of COBRA Subsidy Eligibility Period to March 31, 2010

TEA extends the eligibility period for the COBRA subsidy from February 28, 2010 to March 31, 2010. This extension provides an additional month during which individuals who are involuntarily terminated may become eligible for the COBRA subsidy if they meet each of the subsidy qualifications set forth by the American Recovery and Reinvestment Act of 2009 ("ARRA") – the legislation which originally created the COBRA subsidy program.

For individuals suffering involuntary terminations on March 1, 2010 – the only day during which there was a temporary expiration of the COBRA subsidy program – TEA ensures that they remain eligible for the COBRA subsidy as if it had not expired.

An Employer's Determination that an Individual Was Involuntarily Terminated

In addition to its extension of the COBRA subsidy eligibility period, TEA enacted provisions which protect employers who reasonably determine that an individual was involuntarily terminated. Involuntary termination is the "qualifying event" under COBRA that makes a former employee eligible for a federal COBRA subsidy.

TEA revised the Internal Revenue Code so that in any case in which an employer determines that a qualifying event for an individual was an "involuntary termination," the IRS shall adopt and honor that determination so long as: (1) the employer bases its determination "on a reasonable interpretation" of the ARRA and related administrative guidance; and (2) "the employer maintains supporting documentation of the determination, including an attestation by the employer of involuntary termination with respect to the covered employee."

Thus, employers should ensure that when they make the determination as to whether an individual has been involuntarily terminated, and thereby is ineligible for the COBRA subsidy, they properly look to the applicable regulations and document the process of their determination.

Clarification of the COBRA Subsidy's Applicability to Persons Who Suffer a Reduction of Work Hours

TEA also provides new regulations in an attempt to clarify confusion concerning the COBRA subsidy's applicability to individuals whose qualifying event consists of a reduction of hours. As the Internal Revenue Service has previously determined, individuals whose qualifying event is based on a reduction of hours are generally not eligible for the COBRA subsidy unless they subsequently suffer termination of their employment.

According to TEA, where such individuals did not previously make an election of COBRA continuation coverage on the basis of the reduction of hours of employment, they must be provided with another opportunity to elect COBRA continuation coverage if they subsequently suffer an involuntary termination on or after March 2, 2010. In the event that the individual elects COBRA continuation coverage following his or her involuntary termination, TEA provides that the individual's COBRA coverage period must be calculated as though the original reduction of the employee's hours were the qualifying event which triggered his or her COBRA eligibility. Furthermore, the COBRA notifications provided following an involuntary termination of the individual must incorporate information concerning TEA's regulations which affect him/her.

For more information on the ARRA's eligibility requirements for the COBRA subsidy, please see MBJ's Client Alert dated April 10, 2009, entitled, "[Changes to COBRA as a Result of the Economic Stimulus Bill](#)", or contact your MBJ attorney.

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