

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

The COBRA federal subsidy program, initially established in April 2009, has been extended and expanded. On December 19, 2009, 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 Fiscal Year 2010 Defense Appropriations Act (the "Act"), the eligibility period for the federal COBRA subsidy was extended an additional two months and the nine-month period of the federal government subsidy was expanded to fifteen months.

Extension of COBRA Subsidy Eligibility Period to February 28, 2010

The Act extends the eligibility period for the COBRA subsidy from December 31, 2009 to February 28, 2010. This extension provides an additional two months 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. The Act clarified that the date on which an individual experiences a qualifying event is the date which is to be used to determine the eligibility and notice requirements for the COBRA subsidy.

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

Expansion of COBRA Subsidy Maximum Period to 15 Months

The Act's second major amendment to the ARRA is the expansion of the COBRA subsidy maximum period. Through the Act, individuals qualifying for the COBRA subsidy on or after December 19, 2009 will now be entitled to receive the COBRA subsidy for a maximum period of fifteen months. Previously, individuals who met the ARRA's requirements for the COBRA subsidy ("assistance-eligible individuals") were limited to receiving the subsidy for a maximum period of nine months.

In addition, the Act includes provisions for the retroactive expansion of the maximum COBRA subsidy for assistance-eligible individuals who experienced involuntary terminations prior to December 19, 2009. In regards to this retroactive expansion, the Act mandates that assistance-eligible individuals be provided with: (1) the election to retroactively pay COBRA premiums for their "transition period" in order to maintain COBRA coverage, and (2) reimbursement for certain premiums which were paid in full during an individual's "transition period."

For purposes of the Act, a "transition period" is any period beginning prior to December 19, 2009 during which an assistance eligible individual's COBRA subsidy expired following the original nine-month period, and where such individual is now entitled to the expanded COBRA subsidy period under the Act.

Note: Even after the Act's expansion of the COBRA subsidy period, eligibility for the subsidy will still terminate upon (1) the expiration of the continuation coverage period under COBRA, or (2) an individual becoming eligible for other group medical coverage.

Retroactive Election to Pay COBRA Premiums

For individuals who lost COBRA continuation coverage following the expiration of their original nine-month COBRA subsidy for failure to make timely premium payments, the Act provides an opportunity

to retroactively maintain such coverage.

Under the Act, individuals are now allowed to maintain COBRA continuation coverage and be treated as having made timely premium payments if they (1) were enrolled in COBRA continuation coverage up until the time of their transition period, and (2) pay the required premiums before the later of February 17, 2010 or 30 days after the provision of notification of their rights under the Act (see “Notification Requirements” below).

For purposes of this provision, the premiums which these individuals must pay are those premiums as reduced by the newly expanded COBRA subsidy – not the premium amounts which they were required to pay at the original time of their missed payments.

Reimbursement and Credits for Retroactive Subsidy Eligibility

For those individuals who did maintain their COBRA continuation coverage during their transition period by paying the full premiums, the Act mandates that reimbursements be provided to them in an amount representing the difference between what the individuals actually paid and that which they would have been required to pay had the fifteen-month subsidy been in effect during their transition period. Generally, this means that the individual will be entitled to a reimbursement of 65% of their premium payments made during their transition period.

The Act provides that responsibility for these reimbursements lies with the person/entity to whom/which an individual made their full premium payments during their transition period. In many instances, this means that employers are the entities responsible for providing the retroactive subsidy reimbursement.

In lieu of reimbursement payments, the Act also affords entities the option to provide a credit to individuals for the retroactive subsidy amount towards future COBRA payments. However, entities may only provide this credit instead of a reimbursement if it is reasonable to believe that the credit will be used by the individual within 180 days of the date the individual originally made his or her full premium payment.

Notification Requirements

In conjunction with these new provisions, the Act requires that certain notifications be provided to individuals. Specifically, group health plan administrators must provide notification with information regarding the Act’s provisions to any individual who was assistance eligible on or after October 31, 2009, or who experiences a qualifying event that consists of termination of employment on or after that date. For individuals who experienced their qualifying event on or before December 19, 2009, group health plan administrators are required to provide them with this notification by February 17, 2010.

However, individuals experiencing a qualifying event after December 19, 2009, are entitled to receive this notification pursuant to the ARRA’s existing notice requirements. This means that employers providing COBRA notices to individuals experiencing qualifying events after December 19, 2009 are now required to include this new information concerning the Act’s provisions within such notices.

Finally, group health plan administrators must also provide notification regarding the ability to make retroactive premium payments in order to maintain their COBRA coverage to individuals who did not timely pay their premium payments during their transition period, as discussed above.

Note to Small Employers:

While COBRA applies to employers with 20 or more employees, employers with 2-19 employees may also be impacted by the Act through its effect on state “Mini-COBRA” laws. In Massachusetts, small

employers will be subject to the Act's extension of subsidy eligibility to February 19, 2009, and the Act's prospective expansion of the subsidy period to fifteen months. However, until further guidance is provided, it remains unclear whether Massachusetts small employers are subject to the retroactive components of the Act.

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