

LABOR AND EMPLOYMENT ALERT

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COBRA SUBSIDY EXTENDED

In early 2009, as part of the federal government's response to the economic crisis, Congress provided a temporary federal subsidy for the costs of continuing participation in a former employer's group health insurance plan for workers who lost jobs involuntarily in the recession and their covered spouses and dependent children. Qualifying beneficiaries ("Assistance Eligible Individuals") would pay only 35 percent of the cost they would normally pay for COBRA benefits for the first nine months of eligibility. The other 65 percent was "fronted" by the former employer (or for some kinds of plans, the insurance carrier) and generally recouped through a credit in a subsequent payroll tax return filing. The initial COBRA subsidy legislation made the subsidy available only for involuntary employment terminations occurring after September 1, 2008, and before January 1, 2010.

With the end date of the eligibility fast approaching, the Department of Labor was peppered with inquiries about how to handle late 2009 terminations. Recent guidance advised employers that persons let go in December whose regular employment-based health insurance coverage would not end before December 31 were not eligible for any continuation subsidy.

Employment loss is still at high rates in many areas of the country, and new jobs have not appeared fast enough to ensure alternative coverage to the large number of unemployed persons whose nine months' subsidy is about to expire. Congress has ridden to the rescue -- of those immediately impacted, at least. An extension of the COBRA subsidy was added to a defense appropriations bill passed last weekend and signed by President Obama on December 19. The legislation does the following:

- adds an additional six months of subsidy for the COBRA benefits of Assistance Eligible Individuals;
- adds an additional two months to the window of eligibility, so that employees losing jobs involuntarily through February 2010, and their spouses and dependents, will be eligible for the now 15 month subsidy AND (thankfully) clarifies that the date of employment termination, not benefit cessation, governs eligibility;
- requires employers to provide notice of the new rules within 60 days to all beneficiaries who qualified for the subsidy as of October 31, 2009, so as to include those who dropped coverage when their nine months of subsidy expired and who might wish to recapture that coverage now that the price tag is back down to the 35 percent level.

Questions will abound once again, including how this will affect employers with fewer than 20 employees, what the notice will look like, and the myriad permutations of specific issues that invariably come up.

Here we go again!