

COBRA Subsidy Extended Through February 2010

On Saturday, December 19th, the Congress passed the Department of Defense Appropriations Act of 2010 (H.R.3326) and on Monday the 21st President Obama signed it into law. H.R. 3326 contains an extension of the existing COBRA Subsidy originally enacted as part of the American Recovery and Reinvestment Act (ARRA).

Extension of the Current Subsidy

H.R. 3326 extends the subsidy for Assistance Eligible Individuals (AEIs) from nine (9) to fifteen (15) months. Individuals currently receiving the subsidy will not need to do anything, they will automatically be entitled to up to 15 months of the subsidy (as long as they remain eligible).

Extension of Time to Qualify for the Subsidy

The law also extends eligibility for the subsidy to individuals who have a COBRA event due to an employee's involuntary termination through February 28, 2010. The new rules change a clause in the original legislation which was the source of much confusion. In the original COBRA subsidy legislation an individual had to be terminated from employment and lost coverage by December 31st, 2009. The effect of this rule was that people who were terminated during December 2009 were not eligible for the subsidy if their coverage stayed in force until the end of the month.

Under the new rules an individual need only have a qualifying COBRA event (involuntary termination) by February 28th, 2010 to be considered an AEI, it no longer matters when their actual termination of coverage occurs.

Another New Notice Requirement

Employers are required to send a special notice describing the extension to certain individuals who are on COBRA or have a COBRA event after October 31st. The notice must be sent by February 20th, 2010 (60 days from the enactment of the law). The notice must be sent to:

- Any individual who was an AEI at any time on or after October 31, 2009
- Any individual who experiences a termination of employment qualifying event on or after October 31, 2009

Employers must also amend current COBRA notices to reflect the new period of eligibility and length of subsidy described above. It is expected that the DOL will issue model language for the special notice, but employers should consider sending a notice as soon as possible. As described in the next section, individuals will have an opportunity to retroactively pay COBRA premiums once they receive the notice.

Retroactive Premium Payment

The rule also allows individuals whose subsidy has expired or who failed to pay for their December premium an opportunity to retroactively pay and have their coverage continued without interruption. It is unclear in the legislation if the retroactive payment right would be extended to eligible individuals who did not pay for their COBRA premium for earlier months. The DOL is expected to issue additional guidance on this point and we will update you as soon as this issue is clarified.

For more information contact W.J. Flynn and Associates, LLC at 651-287-2371 or bob.radecki@wjflynnandassociates.com

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