



March 5, 2010

Legislative Update:

The COBRA Subsidy: Round Three

It comes as no real surprise — that once again the U. S. Senate has approved an extension of the COBRA premium subsidy that was scheduled to end on February 28, 2010. Employers and benefit administrators across the country suspected that the subsidy would be renewed, but the Senate waited until “midnight” to ratify the new measure.

The renewal of the current premium subsidy was approved by the Senate on Tuesday, March 2, 2010, and was signed into law by President Obama later that night. This “Temporary Extension Act of 2010” (TEA) amends the American Recovery and Reinvestment Act of 2009 (ARRA).

Specifically, the new legislation extends the eligibility period for reduced COBRA premiums through March 31, 2010. Those who experience involuntary termination of employment during the month of March will be entitled to the 65% reduction in COBRA premiums, which is repaid to employers through tax credits. This is the third installment of premium relief that was initially scheduled to end on December 31, 2009. The first extension carried the subsidy through an additional two months — until February 28, 2009, and extended the subsidy coverage period from 9 months to 15 months. The most recent extension has added another month of eligibility, and has provided legislators with more time to consider a proposal to extend these benefits through the end of 2010.

The “TEA” legislation also introduces a new eligibility wrinkle for employers and administrators. **COBRA, with the premium reduction, will also be made available to those who experienced a reduction in hours that was followed by involuntary termination of employment.** This new provision re-opens the doors for reduced COBRA premiums and creates new responsibilities for those who administer COBRA benefits. For involuntary terminations that occur from March 2 to March 31st, it will be necessary to determine whether individuals first experienced a reduction in hours that caused them to lose their group healthcare coverage. This review for “reduction in hours” will date back to September, 2008. If affected individuals (1) did not elect COBRA coverage when their hours were reduced or (2) discontinued COBRA coverage, they will be eligible for a new COBRA election period, with the 65% subsidy, at the time of the involuntary termination. For those who become eligible for the subsidy due to a previous reduction in hours, followed by involuntary termination:

- The subsidy will commence for periods of coverage beginning on or after March 2, 2010. Neither coverage nor the subsidy will be applied retroactively.
- Any break in coverage (or gap) will be disregarded when considering limits for pre-existing conditions.
- This new provision does not change the maximum coverage period under COBRA. For those who elect COBRA after a reduction in hours (as described above), the COBRA period dates back to the date of the reduction in hours. So, for those who are eligible for the subsidy due to a prior reduction on hours, the premium subsidy will only apply to the number of months that remain in the COBRA coverage period. (Example: if an individual is involuntarily terminated in March, 2010, but experienced a reduction in hours and lost eligibility for health coverage on 2/1/09 — the COBRA coverage period actually began on 2/1/09. In this case, 18 months of COBRA continuation were originally available, and 14 months have already elapsed. This individual would only be able to elect COBRA coverage, with the subsidy, for the remaining 4 months.)

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What Employers Should Do:

- As of March 2, 2010, employers and plan administrators are required to provide revised COBRA notices within 60 days of involuntary terminations. Model COBRA notices are expected to be released by the Department of Labor within the next few weeks. Notices must reflect the new subsidy extension as well as the “second chance” to elect COBRA for those who had an earlier reduction in hours (back to 9/1/08).
- Review personnel records to identify employees who lost health care coverage due to an earlier reduction in hours and may become eligible for a new COBRA election period if involuntarily terminated in March, 2010. Maintain this tracking system since Congress may extend the subsidy beyond March, 2010.

The KSPH COBRA team will be assisting clients with the administration of these new provisions, and we will continue to provide all of our clients with additional information and guidance as further legislative updates are announced.

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