

Employee Benefits E-news

April 22, 2010

COBRA Premium Subsidy Program Extended Through May 31, 2010

For the third time, the Federal government has extended the COBRA premium subsidy program originally implemented under the American Recovery and Reinvestment Act of 2009 ("ARRA"). On April 15, 2010, President Obama signed into law the Continuing Extension Act of 2010 ("Act") which extended the eligibility period for qualifying for the COBRA premium subsidy program from March 31, 2010 to May 31, 2010.

Background

As originally enacted, ARRA was intended to serve as a temporary program to make COBRA affordable to involuntarily terminated employees and their families. The program was designed to apply to individuals whose COBRA qualifying events were an involuntary termination of employment that resulted in a loss of group health plan coverage on or after September 1, 2008 and on or before December 31, 2009 and who elected COBRA continuation coverage as a result. These individuals, known as "Assistance Eligible Individuals" ("AEIs"), were originally eligible to receive COBRA continuation coverage with 65% of the COBRA premium subsidized by the Federal government for up to 9 months.

In December 2009, the Department of Defense Appropriations Act, 2010, ("2010 DOD Act") extended the availability of the subsidy from 9 months to up to 15 months. The 2010 DOD Act also extended eligibility to qualify for the subsidy to individuals whose qualifying events were an involuntary termination of employment occurring on or before February 28, 2010 and clarified that AEIs would be entitled to the premium subsidy regardless of whether their loss of group health plan coverage occurred before or after February 28, 2010.

Subsequently, the Temporary Extension Act of 2010 extended the eligibility period to qualify for the subsidy to those individuals whose qualifying events were an involuntary termination of employment occurring on or before March 31, 2010. The Temporary Extension Act also expanded the definition of AEI, in which an individual will be an AEI if:

- The individual has a reduction in hours of employment COBRA qualifying event (which in most cases does not entitle an individual to the COBRA premium subsidy) between September 1, 2008 and March 31, 2010; and
- The individual has an involuntary termination of employment between March 2, 2010 and March 31, 2010.

The expanded definition of AEI applies for periods of coverage beginning after March 2, 2010.

Implications of Continuing Extension Act of 2010

The Act not only extends the COBRA premium subsidy program for an additional two months, but also applies retroactively to the prior expiration of the eligibility period. As a result, individuals who would have otherwise qualified as an AEI between April 1, 2010 and April 14, 2010, but who did not make an election for the COBRA premium subsidy, will be permitted to elect the COBRA premium subsidy. In addition, the Act retained the expanded definition of AEI, meaning an individual who has a reduction of hours of employment between September 1, 2008 and May 31, 2010 followed by an involuntary termination of employment between March 2, 2010 and May 31, 2010 will also qualify for the COBRA premium subsidy.

Notice of the Extension

The Act provides a general reference that the same notice rules that have applied in the past will continue to apply for the extension of the COBRA premium subsidy program. Specifically, administrators of group health plans are required to provide notice of the extension to May 31, 2010 no later than by June 15, 2010 (60 days after enactment of the Act) to the following individuals:

- any individual who became entitled to elect the COBRA premium subsidy prior to enactment of the Act; and
- any individual who does not have an election of COBRA continuation coverage in effect on the date of enactment of the Act, but who would have been an AEI had the election been in effect prior to the enactment of the Act.

If past governmental practice is any indication, we expect the Department of Labor to prepare model notices of the extension and make the model notices available for distribution shortly. We also anticipate another extension of the COBRA premium subsidy program in the near future, as President Obama has signaled his intent for the program to continue through the end of the year.

For more information about the COBRA subsidy program extension, or for questions regarding any employee benefits issue, contact your regular Butzel Long attorney, a member of the Butzel Long Employee Benefits Practice Group, or the authors of this e-news bulletin.

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