

UPDATE – COBRA Subsidy: What It Means For Employers Now

by **Joan A. Disler, Michelle Capezza and Gretchen Harders**

December 2009

On December 19, 2009, President Obama signed into law the Department of Defense Appropriations Act of 2010 (the “Act”), which, among other things, amends certain provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”) pertaining to premium assistance for benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”). Prior to this amendment, the COBRA subsidy provided premium assistance to “assistance eligible individuals” experiencing a qualifying involuntary termination of employment equal to 65 percent of the cost of COBRA coverage (including state “mini-COBRA” coverage) for a period of up to nine (9) months. The COBRA subsidy was set to expire for assistance eligible individuals who become eligible for COBRA during the period that began September 1, 2008 and ends December 31, 2009.

The Act extends and expands the COBRA subsidy rules, as follows:

- The definition of an assistance eligible individual has been amended to include qualified beneficiaries eligible for COBRA continuation coverage (as defined under ARRA) by reason of a qualifying involuntary termination of employment occurring during the period that begins September 1, 2008 and ends *February 28, 2010*;
- The nine (9) month maximum period of premium assistance is extended to *fifteen (15) months*;
- Assistance eligible individuals have the ability to retroactively pay reduced premiums for the “transition period” (*i.e.*, any period of coverage that began before the enactment of the Act and to which the extension from nine (9)

months to fifteen (15) months for the reduced COBRA premium applies); and

- Assistance eligible individuals who have paid the full premium amount during the transition period may receive either a reimbursement of the excess premium amount paid or a credit toward future premium payments.

The Act does not extend the otherwise applicable federal COBRA coverage period (*i.e.*, generally eighteen (18) months) or the state continuation coverage period. However, the Act imposes additional administrative requirements on employers, including the following additional notice requirements:

- **Notice to Individuals Who Lost Premium Assistance** – The plan administrator must provide additional notice to assistance eligible individuals who continue to receive COBRA coverage, who may have failed to timely pay premiums during their transition period or who paid the full premium. This notice must include information on the ability to make retroactive premium payments during the transition period to maintain COBRA coverage and must be sent within the first sixty (60) days of the individuals' transition period under the Act. Assistance eligible individuals have until the later of sixty (60) days after the date of enactment of the Act (*i.e.*, by February 17, 2010) or thirty (30) days after this notice is provided to them to pay premiums retroactively.
- **Notice to Individuals Who Are Assistance Eligible Individuals as of October 31, 2009 or Later** – The plan administrator must provide additional notice to those who are assistance eligible individuals at any time on or after October 31, 2009, or who experience a COBRA qualifying involuntary termination of employment on or after such date. This notice must include information regarding the amendments made by the Act and must be provided within sixty (60) days of enactment of the Act or, in the case of a qualifying event occurring after the date of enactment of the Act, consistent with the usual COBRA notice deadline (generally forty-four (44) days after the qualifying event).

The amendments to ARRA made by the Act are effective immediately. Accordingly, employers should take the following steps as soon as possible:

- Revise and update COBRA communication materials.
- Provide written notice to assistance eligible individuals who have lost premium assistance within the first sixty (60) days of their transition period.
- Provide written notice by February 17, 2010, to assistance eligible individuals who are eligible for the COBRA subsidy on and after October 31, 2009, but before December 19, 2009.
- Provide an updated COBRA notice to reflect provisions of the Act to assistance

eligible individuals who are eligible for the COBRA subsidy on and after December 19, 2009, in accordance with the usual COBRA notice deadline.

- Implement administrative procedures to facilitate retroactive premium payments, reimbursements or credits, as necessary.
- Review severance plans and other agreements that provide an employer-paid COBRA subsidy in light of the new extension.

For more information about this Client Alert, please contact:

Joan A. Disler
Newark
(973)-642-1900
JDisler@ebglaw.com

Michelle Capezza
New York
(212)-351-4774
MCapezza@ebglaw.com

Gretchen Harders
New York
(212)-351-3784
GHarders@ebglaw.com

* * *

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.-

© 2009 Epstein Becker & Green, P.C.

ATLANTA • BOSTON • CHICAGO • HOUSTON • LOS ANGELES • MIAMI
NEW YORK • NEWARK • SAN FRANCISCO • STAMFORD • WASHINGTON, DC

Attorney Advertising

www.ebglaw.com

