

CONGRESS EXTENDS COBRA SUBSIDY

The Consolidated Omnibus Budget Reconciliation Act of 1985, commonly called COBRA, gives workers who lose their jobs, and thus their health benefits, the right to purchase group health coverage provided by an employer's plan under certain circumstances.

Generally, if an employer continues to offer a group health plan, the employee and his or her family can retain their group health coverage for up to 18 months after a qualifying event by paying the normal group rates. Usually the COBRA premium may be higher than what the individual was paying while employed but generally the cost is lower than that for private, individual health insurance coverage.

The American Recovery and Reinvestment Act of 2009 ("ARRA"), the financial stimulus law signed by President Barack Obama on February 17, 2009, included significant changes to the COBRA continuation coverage rules. Specifically, the ARRA provided a federal government subsidy of COBRA continuation coverage premiums. Under the original provisions of the ARRA, the federal government would subsidize sixty-five percent (65%) of the COBRA premium actually charged to an "assistance eligible individual" (AEI) for up to nine months. On December 21, 2009, President Obama signed legislation which extended the subsidy program for an additional six (6) months and increased the eligibility period by two (2) months from December 31, 2009 to February 28, 2010.

As such, under the new legislation, an AEI is a COBRA qualified beneficiary who: (a) is eligible for COBRA coverage at any time on or after September 1, 2008 and on or before **February 28, 2010**; (b) elects COBRA coverage either during the original COBRA election period or during the special election period provided by the ARRA; and (c) is a COBRA qualified beneficiary because of an involuntary termination of a covered employee's employment that occurs on or after September 1, 2008 and on or before **February 28, 2010**.

Employees terminated for gross misconduct do not qualify as AEIs. It should be noted that an AEI may be a covered employee or a covered employee's covered spouse or dependent child who became a qualified beneficiary because of the involuntary termination of the covered employee's employment.

Under the subsidy program, a group health plan can require an AEI to pay only thirty-five percent (35%) of the COBRA premium that the AEI would otherwise be required to pay for a **fifteen (15)** month period after the individual becomes COBRA eligible. The federal government will reimburse an employer for the remaining sixty-five percent (65%) of the COBRA premium by allowing the employer to take a credit against the employer's liability to deposit payroll taxes and federal income taxes withheld from employees' compensation.

The legislation also provides protection for employees whose subsidy period already expired. Under the new legislation, any employee whose subsidy period expired and who failed to pay their full unsubsidized premium will be provided the opportunity to retroactively pay the subsidized portion and elect to remain on COBRA. Further, if an employee elected to remain on COBRA after the subsidy expired and continued to





pay the unsubsidized premium, an employer may either reimburse the employee for the amount paid above the thirty-five percent (35%) or use such funds to provide payment for the remaining COBRA eligible months. Employers must provide notice describing the new fifteen month premium subsidy to all individuals who are COBRA beneficiaries on or after October 31, 2009 and to all individuals whose employment is terminated on or after October 31, 2009 and prior to February 28, 2010.

The subsidy ceases to apply (and a plan administrator may again charge the full COBRA premium) as of the earliest of the date the AEI becomes eligible for coverage under another group health care plan (other than plans providing only dental, vision, counseling, or referral services, a health care flexible spending plan, or a health reimbursement arrangement) or Medicare coverage; fifteen-months after the first day of the first month to which the subsidy applies; or the end of the maximum COBRA coverage period required by law.

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