

COBRA Subsidy Law Extended, Expanded

12/28/2009

By Thompson Publishing Group Inc/Obtained from SHRM Website.

President Barack Obama signed into law on Dec. 21, 2009, an extension and expansion of a COBRA premium subsidy law that was due to expire on Dec. 31. The extension means new compliance obligations for employers, as the program now runs through Feb. 28, 2010, the subsidy period is expanded by six months and new notice requirements must be met within a tight time frame.

Earlier this year, in response to the poor economic conditions, the American Recovery and Reinvestment Act (ARRA) of 2009 established a new law which "assistance-eligible individuals" (AEIs) were initially entitled to receive a 65-percent subsidy for continuation coverage premiums for up to nine months. Under the original law, an AEI is any COBRA qualified beneficiary who elects COBRA coverage and: (1) has a loss of group health coverage as a result of an involuntary termination of employment (other than gross misconduct); and (2) has a qualifying event between Sept. 1, 2008, and Dec. 31, 2009, is otherwise eligible for COBRA coverage during that period and elects that coverage. The law included various new administrative and notice requirements for employers, many of which had to be met within a short period after ARRA was enacted.

Although the ARRA subsidy was supposed to be a short-term fix, as the economy's rebound became more protracted than expected, in late fall lawmakers began considering proposals to extend the law and earlier this month, President Obama called for an extension. At least three proposals were introduced—one simply extended the eligibility period by six months, the other two proposals both extended the eligibility period and made further tweaks to the subsidy law provisions.

An amendment to extend and expand the subsidy law was added to the House Department of Defense appropriations bill (H.R. 3326), which the House passed Dec. 16. On Dec. 19, the Senate approved the House version, which then went to the president for his signature.

Following are the key provisions of the COBRA subsidy extension:

The amount of time an AEI can receive a subsidy increases from nine to 15 months.

The subsidy eligibility period is expanded to include the period that begins with Sept. 1, 2008, and ends with Feb. 28, 2010 (formerly Dec. 31, 2009). Significantly, the new rule does not require that COBRA coverage begin by the end of the period (Feb. 28) — instead, the person is an AEI as long as the COBRA qualifying event (involuntary termination of employment) occurs by Feb. 28, 2010, and is entitled to COBRA coverage as a result of that event.

For any AEI for whom the premium subsidy now applies due to the extension, there is a transition period consisting of any period of coverage that begins before the extension's enactment date. Any period during which the applicable premium had been paid is to be treated as a period of coverage, irrespective of any failure to timely pay the applicable premium for such period.

Plan administrators must provide a notice on extension rights to AEIs who did not timely pay the COBRA premium for any period of coverage during their transition period or paid the full (non-subsidized) premium without regard to the subsidy rules. The notice must be provided within the first 60 days of their transition period, and must include information on the ability to make retroactive premium payments as a result of the transition period.

In the case of any premium for a period of coverage during an AEI's transition period, an AEI shall be

treated for purposes of any COBRA provision as having timely paid the premium amount if he or she: (a) was covered under the COBRA coverage to which such premium relates for the period of coverage immediately preceding the transition period; and (b) pays, not later than 60 days after the extension enactment date (or, if later, 30 days after the new notices are provided) the amount of the subsidized premium.

In the case of an AEI who, during his or her transition period, paid the full premium amount for such coverage without regard to the subsidy amount, ARRA's rules allowing for that AEI to be reimbursed for the excess premiums will apply.

Plan administrators must provide notices of the new extension rights to individuals who became AEIs on or after Oct. 31, 2009, or experience a qualifying event (consisting of termination of employment) relating to COBRA coverage on or after that date. The notice must be provided within 60 days after the extension's enactment date or, in the case of a qualifying event occurring after the enactment date, consistent with the timing of COBRA notices.

"I am pleased Congress has acted and the president has signed the Fiscal Year 2010 Defense Appropriations Act" said Phyllis C. Borzi, assistant secretary of the Employee Benefits Security Administration in a Dec. 21 statement. "The act extends the eligibility period for the ARRA premium reduction for an additional two months (through Feb. 28, 2010) and the maximum period for receiving the subsidy for an additional six months (from nine to 15 months). Millions of unemployed Americans and their families will be better able to afford and keep their health benefit coverage because of this new law."

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