

## Employment Alert

### COBRA Subsidy Extended

December 22, 2009

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As we discussed in our [February 26, 2009 Alert](#), the American Recovery and Reinvestment Act ("ARRA") of 2009 provided expanded rights under the Consolidated Omnibus Budget Reconciliation Act, known as COBRA. ARRA gave employees (and their dependents) who were involuntarily terminated from employment between September 1, 2008 and December 31, 2009 the right to elect COBRA coverage and pay only 35% of the COBRA premium. Under ARRA, the subsidy was limited to a total of 9 months.

On Monday, December 21, 2009, the President signed the Fiscal Year 2010 Defense Appropriations Act ("Act"), which included an extension of the COBRA subsidy. Under the Act, the subsidy period has been increased to 15 months and employees terminated through February 28, 2010 are eligible to receive it. Employees who exhausted the subsidy before the Act was passed are entitled to the extended subsidy if they retroactively pay the reduced premiums.

While this is good news for COBRA beneficiaries, it also means another administrative burden for employers. The Act requires plan administrators to send new notices, in addition to the notices plan administrators were required to send under ARRA earlier this year. A general notice containing information regarding the Act must be sent by February 19, 2010, or for qualifying events occurring after enactment, within the required notification periods. The notice must be sent to any individual (1) who is an Assistance Eligible Individual (as defined under ARRA) on or after October 31, 2009 or (2) who has been terminated from employment on or after October 31, 2009.

In addition, the Act gives individuals for whom the subsidy has expired a second chance to qualify for it, provided they make retroactive premium payments. Plan administrators are required to send notice by February 19 to all individuals who lost the subsidy and either discontinued their premium payments or made payments that did not include the subsidy. Individuals who failed to make the full premium payments have until 60 days after enactment, or 30 days after notice of the extension period is provided by the plan administrator, whichever is later, to retroactively make the premium payments.

Unlike with the subsidy in ARRA, this Act contains no express direction to the DOL to issue model notices for plan administrators to use in meeting their notice requirements. However, the Act does state that rules similar to those imposed under ARRA apply with respect to the notification provisions, and those rules include the direction to the DOL to issue model notices. We expect the DOL to issue guidance on these new provisions, but it is unclear whether that will include model notices. In the meantime, we will prepare model notices for plan administrators to use and will post them on the Client Center within the next 30 days.