

COBRA SUBSIDY EXTENDED AGAIN

The COBRA premium subsidy program was first enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA) to provide temporary COBRA and state law health continuation coverage premium assistance, for a period of up to nine months, for individuals who were involuntarily terminated from employment and became eligible for COBRA during the period from September 1, 2008, through December 31, 2009. The Department of Defense Appropriations Act, 2010 extended the maximum subsidy period from nine months to 15 months and the eligibility period through February 28, 2010. Once again, Congress has extended and expanded the COBRA premium subsidy program under the "Temporary Extension Act of 2010" (Act). The key provisions of the Act include:

The extension of the eligibility period for the COBRA subsidy to March 31, 2010.

- › The expansion of the COBRA subsidy to include, as a qualifying event under certain circumstances, an involuntary termination of employment that follows a qualifying event that is a reduction of hours.
- › The Act also includes new provisions related to employers' determinations regarding employees' eligibility for the premium subsidy.

EXPANSION OF "ASSISTANCE ELIGIBLE INDIVIDUALS"

Under ARRA, only individuals who experienced a qualifying event that was an employee's involuntary termination of employment could become "assistance eligible individuals" (AEIs) and take advantage of the COBRA premium subsidy. The Act expands the premium subsidy to include as a qualifying event for purposes of the subsidy, a reduction of hours that occurred at any time from September 1, 2008, through March 31, 2010, which is followed by an involuntary termination of employment that occurs between March 2, 2010, and March 31, 2010. Individuals who experience a qualifying event that falls under this expanded definition and are otherwise eligible AEIs (Reduced Hours AEIs) will be eligible for the COBRA subsidy, effective for periods of coverage beginning after March 2, 2010.

NOTICE REQUIREMENTS

Plan administrators will have to update their COBRA notices to reflect the new eligibility extension to March 31, and the expansion of the subsidy to cover Reduced Hours AEIs. For individuals who become Reduced Hours AEIs, the plan administrator must provide a new notice describing the expanded eligibility terms within 60 days of a Reduced Hours AEI's involuntary termination of employ-

NEW ELECTION PERIOD

For Reduced Hours AEIs who did not elect COBRA based on the reduction of hours of employment, or who elected COBRA and later discontinued it, the involuntary termination must be treated as a qualifying event that requires a new election period. The Act is not specific as to

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the length of the new election period, but following COBRA's general principles and those of the special election period under ARRA, plan administrators should allow a Reduced Hours AEI 60 days after the new COBRA election notice is provided to elect COBRA. The following rules will apply to a Reduced Hours AEI who elects COBRA during the new election period:

- › The group health plan may not require the Reduced Hours AEI to pay premiums for the period between the reduction of hours and the involuntary termination of employment.
- › The Reduced Hours AEI's maximum continuation coverage period is determined as if the individual had elected COBRA when initially eligible due to the reduction of hours.

REIMBURSEMENT OF SUBSIDIZED PREMIUMS – EMPLOYER'S DETERMINATION OF INVOLUNTARY TERMINATION

For purposes of reporting the amount of the employer's subsidy for AEIs' COBRA coverage to the Internal Revenue Service for reimbursement through payroll tax credits, the Act establishes a safe harbor under which a qualifying event is deemed to be an "involuntary termination." An employer will fall within the safe harbor protection if the employer makes such a determination based on a "reasonable interpretation" of the relevant statutory provisions and administrative guidance and maintains supporting documentation of the determination, including an attestation by the employer of involuntary termination with respect to a covered employee.

NEW ENFORCEMENT PROVISIONS

The Act includes a new provision that permits the Secretary of Labor or Secretary of Health and Human Services, as applicable, to assess a penalty against a plan sponsor or health insurance issuer of not more than \$110 per day for failing to comply with the Secretary's determination that an individual is eligible for the premium subsidy within 10 days of receipt of the determination.

ACTION ITEMS

Plan sponsors and administrators should consider the following immediate action items:

- › Identify New AEIs Due to Expanded Definition. Plan administrators will have to identify any Reduced Hours AEIs, and provide a new notice to them. An individual in this group may be eligible for the special election period if, upon a reduction in hours the individual did not elect, or elected and later discontinued, COBRA.
- › Notices. Plan administrators should update their COBRA notices and other plan communications to include the extension of the eligibility period to March 31, 2010, and a description of the expanded coverage of Reduced Hours AEIs.