2010 COBRA SUBSIDY UPDATE

by

Scott Warrick, JD, MLHR, CEQC, SPHR

Scott Warrick's Consulting & Employment Law Services
(614) 367-0842: Office ♣ (614) 738-8317: Cell

www.scottwarrick.com

NEW SUBSIDY GUIDELINES & EXTENSION

On December 19, 2009, Congress passed an extension and expansion of the COBRA premium subsidy law that was due to expire on December 31, 2009.

On December 21, 2009, President Barack Obama signed the new COBRA subsidy extension and expansion premium subsidy into law.

The new COBRA subsidy law takes effect immediately.

Early in 2009, in response to the poor economic conditions, Congress passed the American Recovery and Reinvestment Act (ARRA) of 2009. The ARRA established a new law under which "assistance-eligible individuals" (AEIs) were entitled to receive a 65-percent subsidy for their COBRA 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 September 1, 2008, and December 31, 2009, is otherwise eligible for COBRA coverage during that period and elects that coverage.

The following are the key provisions of the new COBRA subsidy extension:

1. Under the original COBRA subsidy program, qualifying individuals had 65% of their COBRA premiums covered for up to 9 months. Under this new COBRA subsidy extension, qualifying COBRA participants can now have 65% of their COBRA premiums paid for them for up to **15 months** ... which is an extension of **6 months** beyond the previous law.

2. The original subsidy eligibility period was from September 31, 2008 and ran through December 31, 2009. The COBRA subsidy period has now been expanded to end on **February 28, 2010**.

   This means that COBRA beneficiaries who had reached the end of their 9 month subsidy period before this extension was enacted will have additional time to pay for their extended coverage periods at the reduced subsidized rate. In such cases, for coverage periods that began before the enactment of this extended subsidy, these individuals will need to pay 35 percent of applicable premium costs by the later of February 17, 2010 (60 days after date of enactment, December 19, 2009) or 30 days after notice of the extension is provided by their plan administrator.

3. The new rule does not require that COBRA coverage ***<u>begin</u>*** by the end of the period (February 28, 2010). Instead, the person is an AEI as long as the COBRA qualifying event (involuntary termination of employment) ***<u>occurs</u>*** by February 28, 2010, and is entitled to COBRA coverage as a result of that event.

4. Employers are required to send a special notice outlining these changes within **60 days** (by February 17, 2010) to all eligible individuals who participated in COBRA either on or after October 31, 2009, or to anyone who is terminated from employment after this date.

5. A separate notice must be sent to individuals who stopped paying their COBRA premiums or paid these premiums in full (non-subsidized) during the original nine-month subsidy period. These individuals will be able to retroactively reinstate their coverage by paying the subsidized premiums, or, in the case of those who paid the full premiums, receive a credit or refund of premiums paid

ADMINISTRATIVE ISSUES

Clearly, this extension and new rules will create more COBRA administration for employers and their COBRA administrators.

For example, many employers in late November began sending bills to COBRA beneficiaries whose eligibility for the subsidy ran out. These notices asked COBRA beneficiaries to pay the **full** December premium rather than 35% of the premium.

Those employers now will have to calculate the overpayments these beneficiaries might have made and then decide to either offset the beneficiaries' future COBRA premium payments by the amount that was overpaid or issue refund checks.

Unfortunately, it is a bit more complicated for those beneficiaries whose eligibility for the subsidy ended in November and who **didn't** pay the full unsubsidized December premium.

Under the new subsidy rules, if those individuals paid their 35% share of the premium in the month prior to losing the subsidy, they will have a right to pay 35% of the premium later and receive retroactive coverage. COBRA beneficiaries could receive retroactive coverage if they pay their 35% share within 60 days of the bill's enactment or, if later, 30 days later after their former employer sends them notice that describes the new 15-month premium subsidy.

That will require employers and COBRA administrators to identify beneficiaries whose eligibility for the subsidy ended, send them the required notice and, assuming they pay the required premium, retroactively restore their COBRA coverage.

Employers and plan administrators may ease this complication by expediting notice to participants about the subsidy extension and sending out a revised billing statement.

It is important to remember that COBRA premiums aren't due until 30 days from the start of a monthly coverage period. So, if the beneficiaries received rapid notice of this subsidy extension, they would have time to make their December premium payments reflecting the 65% federal subsidy.

The legislation also requires employers to send a special notice to all premium subsidy-eligible beneficiaries who are on COBRA beginning on or after November 1, 2009, describing the 15-month premium subsidy.

A sample notification notice will be coming shortly.

Notice

Legal Advice Disclaimer

The purpose of these materials is not to act as legal advice but is intended to provide human resource professionals and their managers with a general overview of some of the more important employment and labor laws affecting their departments. The facts of each instance vary to the point that such a brief overview could not possibly be used in place of the advice of legal counsel.

Also, every situation tends to be factually different depending on the circumstances involved, which requires a specific application of the law.

Additionally, employment and labor laws are in a constant state of change by way of either court decisions or the legislature.

Therefore, whenever such issues arise, the advice of an attorney should be sought.

Scott Warrick, JD, MLHR, CEQC, SPHR

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(614) 367-0842 Office ♣ (614) 738-8317 Cell ♣ (614) 367-1044 FAX

www.scottwarrick.com

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Scott's academic background and awards include:

- Capital University College of Law (Class Valedictorian (1st out of 233))
- Master of Labor and Human Resources and B.A. in Organizational Communication: The Ohio State University
- The Human Resource Association of Central Ohio's Linda Kerns Award for Outstanding Creativity in the Field of Human Resource Management and the Ohio State Human Resource Council's David Prize for Creativity in Human Resource Management

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