

COBRA ARRA 65% Assistance Payment Eligibility, Duration Extended

December 22, 2009

On December 19, President Obama signed the Department of Defense Appropriations Act 2010 into law, and as a result, extended the COBRA American Recovery and Reinvestment Act of 2009 (ARRA) 65% assistance payment provisions adopted earlier this year. These provisions were originally scheduled to end December 31.

The Act makes three important modifications to the original assistance payment provisions. The modifications:

- Extend eligibility for the assistance payment for individuals who experience an involuntary termination of employment through February 28, 2010
- Lengthen the maximum duration of the assistance payment from 9 to 15 months
- Allow individuals who lose coverage due to an involuntary termination of employment on or before February 28, 2010 to receive the assistance payment, even if their COBRA coverage begins after February

The Act does not increase the 65% assistance payment percentage, nor does it expand the qualifying events that make individuals eligible for the assistance payment.

The Act adds new notification requirements that are designed (i) to inform all assistance payment recipients (and all individuals who experienced a termination of employment on or after October 31, 2009) of the new 15-month assistance payment duration, and (ii) to notify individuals whose assistance payments ran out in December or January that they can maintain COBRA coverage at the lower assistance payment amount or even reinstate COBRA coverage if they dropped (or lost) coverage when their premiums increased at the end of their original nine-month assistance payment period.

Employers will have 60 days to notify all assistance-eligible individuals and individuals who experienced a termination of employment of the new provisions. Further, individuals who are now eligible for an extended period of assistance payment but who paid the full COBRA premium for December or January will either receive a credit in subsequent months or be entitled to a refund.

In the interim, while employers determine their notification obligations and strategy for handling any overpayments, employers and COBRA administrators should take the following actions:

- Reinstate the ARRA 65% assistance payment for any individuals whose assistance payment ran out in December or January
- Treat payment of 35% of the full COBRA premium as payment-in-full from assistance eligible individuals whose prior subsidy period ended in December or January
- Continue to use their prior COBRA enrollment material and ARRA-specific inserts
- Continue to approve applications for the COBRA ARRA subsidy payments for otherwise-eligible individuals whose involuntary termination of employment occurs after December 31, 2009 and on or before February 28, 2010

Please join us on January 5 for an in-depth discussion of the extended COBRA ARRA rules. You may join the discussion by registering for our complimentary webcast, “COBRA ARRA Extension: Better Late Than Never!” at http://www.morganlewis.com/documents/m/Events/2009/EB_COBRA-ARRA-webcast_091719.html.

For additional background on the COBRA ARRA 65% assistance payment provisions, please see our March 19, 2009 LawFlash, available at http://www.morganlewis.com/pubs/EconoStimulus_ModelCOBRANotices_LF_19mar09.pdf; our February 24, 2009 LawFlash, available at http://www.morganlewis.com/pubs/EconoStimulus_COBRAFurtherDetails_LF_24feb09.pdf; and our February 17, 2009 LawFlash, available at http://www.morganlewis.com/pubs/EconoStimulus_COBRAAction_LF_17feb09.pdf.

Morgan Lewis will continue to monitor this and any future developments associated with the duration and operation of the COBRA ARRA 65% assistance payment provisions. If you have any questions in the interim, please contact any of the Morgan Lewis attorneys listed below:

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