

Morgan Lewis

seminar

COBRA ARRA Extension: Better Late Than Never!

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January 5, 2010

Background

- The American Recovery and Reinvestment Act of 2009 (ARRA)
- 65% tax-free COBRA assistance payment to reduce COBRA premium for 9 months
- Only for involuntary terminations of employment from September 1, 2008 through December 31, 2009

Background (cont.)

- Great concern when Congress did not extend ARRA in time for the December billing cycle (mid-November)
- Year-end snafu for December terminations/ January COBRA start date

Department of Defense Appropriations Act for Fiscal Year 2010 (Act)

- Amends parts of ARRA
- Premium assistance extended by 6 months
- Assistance Eligible Individual redefined and extended by 2 months
- New notice requirements
- Premium payment complications/practical second-chance elections

Premium Assistance

- Period of premium assistance extended from 9 months to 15 months
 - Note: some will run out of COBRA before the end of 15 months
- Amount of premium assistance remains the same at 65%

Assistance Eligible Individuals

Assistance Eligible Individual (AEI) redefined:

- Involuntarily terminated
- September 1, 2008 through February 28, 2010
- Eligible for premium assistance upon timely involuntary termination of employment even if COBRA coverage starts after February 28, 2010
 - *How long can COBRA trail February 28, 2010?*

Notice Requirements

- Notice to AEI or anyone who experiences a termination of employment (on or after October 31, 2009)
 - Note: “termination of employment”
 - Notice must be provided within 60 days of enactment (February 17, 2010) or for a termination of employment occurring after December 19, 2009, during normal COBRA time frames for providing notice
 - Notice must explain changes made by Act
 - *DOL model notice?*

Notice Requirements (cont.)

- Notice to individuals who were AEIs who lost premium assistance (individuals who dropped coverage or continued at higher premium)
 - Notice must be provided within 60 days after expiration of the 9-month subsidy period (January 29, 2010 for an individual whose subsidy ended November 30, 2009)
 - Notice must explain changes made by Act, including manner in which premium payments will be handled
 - *DOL model notice?*

Premium Payments

- Overpayments
 - AEI who continued coverage after subsidy ended
 - *Refund; or*
 - *Credit toward future premium payments (as long as it is reasonable to believe the credit can be used up within 180 days of payment)*

Premium Payments (cont.)

- Retroactive Payment
 - AEI who dropped COBRA after subsidy ended
 - *Must be provided opportunity to retroactively pay in order to maintain coverage*
 - *Payment must be made within 60 days of enactment (or, if later, 30 days after notice is provided)*

Action Items

- Reinststate the ARRA 65% assistance payment for any individuals whose subsidy ended in December or January
- Treat payment of 35% of the full COBRA premium as payment-in-full from AEIs whose prior subsidy period ended in December or January
- Continue to use prior COBRA enrollment materials and ARRA-specific inserts (will need to be updated)
- Continue to approve applications for 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

More To Come?

Jobs for Main Street Act, 2010 (H.R. 2847)

- Extend COBRA premium assistance subsidy through June 30, 2010
- Retiree coverage does not disqualify from subsidy
- Individual on COBRA due to a reduction in hours followed by involuntary termination is eligible for subsidy
 - [Special rules](#)
 - [Notice requirements](#)
- Employer determination of qualifying event as involuntary termination
 - [Attestation](#)
- New enforcement provisions

Questions?

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