

Update on COBRA Subsidy Extension

Mindy Dale and Bill Milne
Weld, Riley, Prens & Ricci, S.C.

On March 2, 2010, the Temporary Extension Act of 2010 (the “Act”) was signed into law. The Act extended the eligibility period for the COBRA premium subsidy to March 31, 2010. (Remember, in December, 2009, the subsidy eligibility period was extended to the end of February.) The Act also made some important clarifications to the COBRA subsidy rules. Highlights of the Act are summarized below.

- The subsidy eligibility period is extended to March 31, 2010. Therefore, someone who is involuntarily terminated prior to the end of March may still qualify for the premium subsidy.
- The Act addresses concerns regarding an employee who had hours reduced, but did not make timely COBRA continuation election (or made an election, but dropped coverage), and is eventually involuntarily terminated. Under pre-Act law, this person would not have qualified for the COBRA premium subsidy, because the COBRA qualifying event was the reduction in hours, not termination. Now, the subsidy is available to an employee who experiences any reduction in hours on or after September 1, 2008, that results in a loss of coverage, followed by an involuntary termination between March 2 and March 31, 2010.
- Also, an employee who is now eligible for the COBRA premium subsidy, because of a reduction in hours followed by an involuntary termination (between March 2 and March 31), but who did not elect continuation coverage at the time hours were reduced, or elected and dropped coverage, is entitled to a new election period. Plan administrators must provide an additional notice informing these employees that the premium subsidy is now available to them; the notice must be given during the 60-day period that begins on the date the employees are involuntarily terminated.
- A newly eligible employee can qualify for the subsidy once involuntarily terminated; however, the 18-month COBRA continuation period will start from the date of the employee’s reduction in hours – the original 18-month COBRA continuation period is not extended. Also, a qualifying employee will not be required to make a payment for continuation coverage for the period between the reduction in hours and involuntary termination.
- Also, for the purposes of applying the premium subsidy, the Act clarifies that an employer’s determination that a qualifying event has occurred will be “deemed” an involuntary termination if the determination is based on a reasonable interpretation of the premium subsidy rules and the employer maintains supporting documentation supporting its determination. The purpose of this

change is to minimize the risk of payroll tax liabilities for an incorrect determination that the premium subsidy applies.

Based on these changes, plan administrators should identify and notify employees who lost coverage due to a reduction in hours on or after September 1, 2008 and who are then involuntarily terminated between March 2 and March 31, 2010; update COBRA election notices to reflect the subsidy eligibility expiration date of March 31, 2010; and, if not doing so already, retain supporting documentation for approved premium subsidy applications.

Finally, plan administrators may want to keep in mind that there are bills currently being considered by Congress that would further extend the premium subsidy eligibility period. Therefore, at least based on recent history, the subsidy eligibility period may very well be extended again, possibly to the end of 2010, and plan administrators may want to watch for future changes.

This article should not be construed as legal advice and is intended for general informational purposes only. If you have any questions regarding this article, you should consult your legal counsel.