

COBRA Subsidy Extension and Related Notice Requirements

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On December 21, 2009, the President signed the Department of Defense Appropriations Act for Fiscal Year 2010 (the “DOD Act”). One of the provisions of the DOD Act extended the deadline one can qualify for the American Recovery and Reinvestment Act (ARRA) COBRA subsidy and the length of the subsidy period. The DOD Act also implemented new notice requirements plan administrators will have to provide over the next several months. The subsidy percentage did not change, however, and remains at 65%.

Overview of Changes Made by DOD Act.

The primary changes made by the DOD Act are as follows:

- An Assistance Eligible Individual (AEI) is now entitled to a 15-month subsidy period.
- The 6-month subsidy period extension is to be applied retroactively. Therefore, if an AEI’s initial 9-month subsidy period has expired, he or she has an opportunity to continue coverage under the subsidized rates. If the AEI stopped paying premiums and wants to reinstate coverage, that person can pay premiums (at the 35% rate) retroactively to the time he or she stopped making payment. If the AEI is still receiving COBRA coverage and has been paying full premium rates, the excess amount (65%) must be refunded or credited to the individual.
- The subsidy eligibility period is extended to February 28, 2010.
- The DOD Act clarifies that an individual may qualify for the subsidy if the COBRA qualifying event (involuntary termination) occurs prior to February 28. Previously, the qualifying event *and* loss of coverage had to occur by the deadline. Now, loss of coverage is not a factor.
- New notice requirements and deadlines, as described below.

What This Means for Plan Administrators – New Notice Requirements.

Notices describing the subsidy extensions must be provided, by February 17, 2010, to:

- Any person considered an AEI on or after October 31, 2009.
- Any person who was voluntarily or involuntarily terminated between October 31, 2009 and December 19, 2009.

- Any person who was previously eligible for the COBRA subsidy, but was either dropped from coverage for failure to pay a COBRA premium or who paid the full premium after the subsidy period expires. This notice must also contain information regarding the individual's right to make retroactive COBRA subsidy payments to reinstate coverage, and advise the person that he or she has until February 17, or 30 days after the notice is provided, whichever is later, to make any necessary retroactive payments.

Any person experiencing a qualifying event after December 19, 2009, should receive a COBRA election notice by the usual deadline; however, that notice must now contain the information regarding the DOD Act revisions.

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.