

March 4, 2010

COBRA SUBSIDY EXTENSION AND CLARIFICATION SIGNED

On March 2, 2010, President Obama signed the Temporary Extension Act of 2010, which extends the February 28, 2010 deadline for qualifying for COBRA premium subsidies, allowing workers who are terminated involuntarily before March 31, 2010 to qualify for the subsidy.

The American Recovery and Reinvestment Act of 2009 (ARRA), as amended by the Department of Defense Appropriations Act of 2010, allowed workers who were terminated involuntarily between September 1, 2008 and February 28, 2010 to be eligible for 65 percent COBRA subsidies. Without this stop-gap extension, workers who were terminated involuntarily after February 28 would not have been eligible for the COBRA subsidy. Now, workers who are involuntary terminated between September 1, 2008 and March 31, 2010 are eligible for up to 15 months of COBRA subsidies.

In addition, the Temporary Extension Act provides that if an employee loses coverage under an employer-sponsored health plan due to a reduction in hours and subsequently is terminated involuntarily, the involuntary termination will be deemed to be the qualifying event for COBRA continuation coverage despite the employee's prior loss of coverage. Such employee may elect COBRA continuation coverage and obtain the benefit of the subsidy even in cases where the employee had not elected COBRA continuation coverage upon the reduction of hours or discontinued coverage prior to the involuntary termination. This provides the individual a second election privilege. The Plan Administrator must provide notice of this second election privilege and the potential COBRA subsidy eligibility no later than 60 days after the termination of employment.

The Temporary Extension Act also includes several provisions regarding whether an employee's termination is involuntary. Pursuant to the Act, an employer's reasonable interpretation of the ARRA and government guidance that an employee was terminated involuntarily will be determinative if the employer maintains supporting documentation. The law also creates an enforcement mechanism if a group health plan refuses to recognize an employee's eligibility for the subsidy following a determination by the Department of Labor. The government may assess a penalty of up to \$110 per day against a group health plan that fails to comply with its determination that an employee is eligible for the COBRA subsidy.

While this extension currently is set to expire on March 31, 2010, there is legislation currently pending that would extend the COBRA subsidy to all individuals with a termination of employment on or before December 31, 2010.

Please contact a McMahon Berger attorney with questions about these or any other issues.

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