

## COBRA SUBSIDY TEMPORARY EXTENSION

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On March 3, 2010, President Obama signed the Temporary Extension Act of 2010 (Temporary Extension Act) into law. The Temporary Extension Act further extends the COBRA subsidy rules that were enacted under the American Recovery and Reinvestment Act (ARRA), and later amended under the Defense Appropriations Act of 2010.

### BACKGROUND

Under the ARRA, employees who were involuntarily terminated between September 1, 2008 and December 2009, are entitled to a governmental subsidy of 65 percent of the premium cost for health care continuation coverage under COBRA for a period of nine months. In December 2009, The Defense Appropriations Act extended coverage to employees who lost their jobs between December 31, 2009 and February 28, 2010. It also expanded the total allowable time during which an individual may receive the COBRA subsidy from 9 months to 15 months. For a more complete discussion on the Appropriations Act, see our December 2009 News Alert entitled, "COBRA Subsidy Extension."

### THE TEMPORARY EXTENSION ACT OF 2010

The Temporary Extension Act provides that employees who are involuntarily terminated through March 31, 2010 are entitled to the 65 percent premium subsidy.

The Act also provides a special rule for employees who lose coverage due to a reduction in hours. Under this rule, if an employee is terminated after a reduction in hours, the termination is deemed the qualifying event for COBRA continuation coverage, even though the employee previously lost coverage. The Act makes clear that employees are entitled to the benefit of this special rule regardless of whether they elected COBRA continuation coverage upon the reduction of hours or discontinued coverage prior to an involuntary termination. Employees who are eligible to elect COBRA continuation coverage under this special rule must receive COBRA rights notices.

The Act further provides additional insight as to what constitutes an involuntary termination. It establishes that an employer's reasonable interpretation of the ARRA (including related administrative guidance) that an employee was involuntarily terminated shall be determinative, provided that the employer maintains supporting documentation, including an attestation of involuntary termination. For a discussion on what circumstances constitute an involuntary termination, see our

April 2009 News Alert entitled, "The American Economic Recovery and Reinvestment Act: Latest IRS COBRA Guidance on 'Involuntary Termination.'"

### ADDITIONAL CHANGES EXPECTED

In addition to the changes provided under the Temporary Extension Act, the United States Congress is expected to further amend the COBRA subsidy rules during 2010. For example, The Jobs for Main Street bill includes provisions to allow individuals who experience an involuntary termination as late as June 30, 2010 to qualify for the COBRA subsidy. We will continue to monitor these developments and provide additional updates.

### CONCLUSION

Employers need to act promptly to provide the appropriate COBRA notices and to update their systems to accommodate the extension. We recognize every employment situation is unique and, as a result, compliance with the Temporary Extension Act, the Appropriations Act and the ARRA may require close legal analysis. If you have any further questions or concerns, please contact us.

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