

March 3, 2010

COBRA Subsidy Extended to March 31, 2010

Yesterday the Senate passed the Temporary Extension Act of 2010 extending the COBRA subsidy provisions through March 31, 2010. The Act was previously passed by the House and now moves to the President for his signature. Employees who are involuntarily terminated between March 1 and March 31, 2010 and who lose group health coverage in connection with the involuntary termination are now eligible for the 15 month COBRA subsidy. Employers will need to amend their notices by replacing "February 28, 2010" with "March 31, 2010" and continue to utilize the subsidy notices through March 31, 2010.

The Act also expands who is eligible for the subsidy. Previously a reduction of hours that resulted in a loss of group health plan coverage did not entitle employees to the subsidy. Under the new Act's provisions, an employee who loses group health plan coverage as a result of a reduction in hours is eligible for the subsidy IF the employee is later involuntarily terminated. Under the previous subsidy provisions, this individual would not have been eligible because his/her qualifying event would have been reduction in hours and not an involuntary termination. The involuntary termination must occur after the Act's passage and presumably before March 31, 2010.

Employees who experienced a reduction in hours followed by an involuntary termination that occurred prior to the Act's passage are not eligible for the subsidy. For example, an employee whose hours were reduced in September 2009 and lost health plan coverage because he/she was no longer a full time employee and then was later terminated in January 2010 would not be eligible for the subsidy because the involuntary termination occurred before the Act's passage.

An employee who experienced a reduction of hours and did not elect COBRA but then is involuntarily terminated after the Act's passage would be eligible to elect COBRA starting with the date of the involuntary termination. The period of coverage, however, would be determined using the date the employee's hours were reduced. For example, if the employee lost coverage in September 2009 because of a reduction in hours and then is involuntarily terminated on March 3, 2010, the 18 month COBRA period (or 9 months for state continuation coverage) would begin to run from September 2009. The employee would be entitled to elect COBRA beginning March 2010 and COBRA would continue only for the remaining COBRA coverage period (in this example, 11 months for COBRA, 2 months for state continuation coverage). No pre-existing condition exclusions can be applied to their coverage. Employers will need to provide these employees with a special notice notifying them of their right to elect COBRA and their entitlement to the subsidy. We expect the Department of Labor to publish a model notice to assist employers with complying with this notice provision and will alert you when the notice is available.

If you have questions, please contact our office at 1-800-258-1415, option 2.
Thank you!

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