

CONGRESS EXTENDS (FOR THE SECOND TIME) AND EXPANDS THE COBRA PREMIUM SUBSIDY

On March 2, 2010 Congress again extended the COBRA premium assistance law, which had expired on February 28, 2010. The 65% federal subsidy will now be available to employees involuntarily terminated on or before March 31, 2010. In addition, the new law makes the premium subsidy available to employees who first qualify for COBRA as a result of a reduction of hours and later are involuntarily terminated. Employers or plan administrators must notify these newly eligible employees within 60 days after an involuntary termination occurring on or after the date of enactment.

COBRA Subsidy Extended (Again)

The COBRA premium subsidy was established by the American Recovery and Reinvestment Act, the economic stimulus law passed in February 2009. (See our Client Alert at www.jaeckle.com/COBRA2009.) It provided a 65% federal subsidy to help laid off employees and their families pay for COBRA coverage for up to 9 months. The original subsidy was set to expire on December 31, 2009, but in December 2009 Congress extended the subsidy to involuntary terminations occurring through February 28, 2010, and increased the maximum subsidy period to 15 months. (See our Client Alerts at www.jaeckle.com/COBRAPremiumSubsidy & www.jaeckle.com/COBRANotices.)

Congress has now passed, and President Obama has signed, stopgap legislation that extends the availability of the COBRA premium subsidy for one more month. The new law - H.R. 4691 - provides that employees involuntarily terminated on or before March 31, 2010 are eligible for COBRA premium assistance. Congress continues to work on legislation that that would extend the premium subsidy to employees involuntarily terminated through December 31, 2010.

Expansion of Subsidy - Termination Following Reduction Of Hours

The new law amends the COBRA subsidy law so that an employee who initially qualifies for COBRA as a result of a reduction of hours of employment, and is later involuntarily terminated, will qualify for the premium subsidy. The Internal Revenue Service had interpreted the original subsidy law as not being available in this situation. Note that for purposes of COBRA, a reduction of hours can include a temporary layoff, a change from full-time to part-time status, a strike or lockout, and a leave of absence. The new law provides that such an employee, who did not elect COBRA when first eligible as a result of the reduction of his or her hours, and who is laid off on or after March 2, 2010, can now elect COBRA and receive the premium subsidy. The employer or plan administrator of a group health plan that covers such an individual must send a COBRA notice within 60 days after any involuntary termination.

If you have any questions about the COBRA premium subsidy, please contact Robert W. Patterson at 716.843.3910 or rpatterson@jaeckle.com, or Michele O. Heffernan at 716.843.3850 or mheffernan@jaeckle.com.

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