

December 29, 2009

### **COBRA SUBSIDY EXTENDED – PROMPT ACTION REQUIRED (UPDATED)**

On December 19, 2009, the Department of Defense Appropriations Act of 2010 (the “Act”) extended the COBRA continuation coverage subsidy, which originally was due to expire at the end of 2009. While the mechanics of the COBRA subsidy generally remain unchanged, the Act expands the coverage previously provided under the COBRA subsidy. Specifically, the Act:

- Extends the COBRA subsidy period from nine months to 15 months. This change is effective retroactively, which means that individuals who have already received or are currently receiving the COBRA subsidy may be eligible for the subsidy for an additional six months.
- Modifies the definition of “assistance eligible individual” (“AEI”) so that an individual can qualify if he or she is involuntarily terminated from September 1, 2008 through February 28, 2010.
- Requires employers to provide a new COBRA subsidy notice by February 17, 2010 or, for qualifying events occurring after December 19, 2009, within the general COBRA notice period. This new notice must be provided to anyone who qualified as an AEI or who experiences a qualifying event on or after October 31, 2009.
- Provides that certain AEIs may retroactively reinstate coverage lost during the “transition period” (generally the period between when an AEI’s original subsidy ended and December 19, 2009) due to a failure to pay premiums. For example, if a person who was eligible for the COBRA subsidy due to an involuntary termination on October 1, 2008 and whose original subsidy ended on June 30, 2009 stopped paying premiums when the original subsidy ended, he or she would have a “transition period” from July 1, 2009 through December 19, 2009. Under the Act, this individual would be eligible to reinstate coverage as long as he or she paid the subsidized premium no later than 60 days after December 19, 2009, or if later, 30 days after the date the new notice regarding the subsidy is provided.
- Provides that certain AEIs who paid the full premium during the transition period may receive refunds or credits towards additional COBRA premiums for the difference between the subsidy and the full premium.

**WHAT YOU NEED TO DO:** In order to comply with this new law employers must act quickly to:

- Amend COBRA notices to reflect the extended eligibility and duration of the COBRA subsidy, and prepare new notices to explain the extension and retroactive reinstatement option.
- Identify all AEIs who dropped COBRA coverage due to non-payment prior to December 19, 2009, and notify these individuals of the premiums required for reinstatement and what they must do to have their coverage reinstated.
- Identify all individuals who were eligible for the COBRA subsidy before December 19, 2009, and paid the full premium for any period, recalculate the premiums with the subsidy to determine if these individuals have overpaid, and determine how to address the overpayment.

- Develop a method (i) for AEs to begin paying only the subsidized premium for any periods after December 19, 2009, or (ii) to notify them that their prior overpayments will be applied for future coverage and when they will need to resume paying premiums on a subsidized or non-subsidized basis.

If you have any questions about the revised COBRA subsidy, please contact:

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