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Employer Alert: COBRA Subsidy Extension

Reminder

On December 19, 2009, President Obama signed a measure to extend the duration of the COBRA subsidy period to fifteen months and to extend the COBRA subsidy eligibility period so that individuals involuntarily terminated from employment through February 28, 2010, as well as their eligible dependents, may now qualify for the subsidy. By this time, all affected plan sponsors and administrators should have revised their model COBRA notices and updated their administrative processes accordingly to comply with this new measure.

Background

Under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), employers with 20 or more employees must offer continuation coverage to employees and dependents that lose coverage under their employers' group health plan due to a termination of employment, sufficient reduction of hours of service, or other "qualifying event." Under COBRA, individuals who elect continuation coverage must pay the full amount of the required COBRA premium. New York's analogous "mini-COBRA" covers employers with less than 20 employees.

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"), which revised COBRA by providing for a subsidy of 65% of the required COBRA premium for eligible individuals for the earlier of nine months or until the individual becomes eligible for coverage under another group health plan or Medicare. Under the Recovery Act, an individual was eligible for the COBRA subsidy if he or she involuntarily terminated from employment from September 1, 2008 to December 31, 2009 and was eligible to elect COBRA during this time. The Recovery Act also applied to employers covered by New York's mini-COBRA.

New COBRA Continuation Provisions

On December 19, 2009, President Obama signed the Department of Defense Appropriations Act (the "Appropriations Act"), which amended the Recovery Act as follows:

1. Extends the nine-month subsidy for six additional months. Thus, the subsidy is now available for up to fifteen months.

(continued)

2. Extends the eligibility period for the COBRA subsidy for two additional months beyond December 31, 2009. Thus, individuals who are terminated from employment from January 1, 2010 to February 28, 2010 will now be eligible for the COBRA subsidy.
3. Allows eligible individuals who exhausted the nine-month subsidy to elect retroactively to take part in the additional six-month subsidy period by paying the reduced premium by the later of February 19, 2010 or within 30 days from the date of the required sponsor notice. In the event the eligible individual paid the full COBRA premium for a period of coverage during the new six-month extension, the excess over and above the reduced premium will be credited against additional months of continuation coverage during the balance of the six-month period, or refunded.
4. Requires plan sponsors to notify individuals who were “assistance eligible individuals,” or who experienced a COBRA-qualifying event of termination of employment on or after October 31, 2009, regarding the Appropriations Act’s COBRA coverage provisions. The required sponsor notice must be provided by February 19, 2010, or, if the qualifying event occurs after that date, pursuant to the relevant provisions of the Recovery Act. Plan sponsors also must provide notice of the reduced premium option to individuals who exhausted their premium subsidy before December 19, 2009 and either failed to pay on time for COBRA continuation coverage thereafter or paid the full premium for a period during which the new six-month extension would apply. Such notice must be provided with 60 days of the expiration of the initial nine-month subsidy period.

To the extent they have not already done so, plan sponsors and administrators should revise their existing COBRA notices and prepare targeted supplemental notices to account for the changes brought about by the Appropriations Act. In this regard, on or about January 14, 2010, the United States Department of Labor (“DOL”) issued a new model notice reflecting the Appropriations Act’s new provisions. The notice, as well as other notices reflecting the Act’s provisions, is available at the following DOL link: <http://www.dol.gov/ebsa/COBRAModelnotice.html>.

We are working closely with clients to assist with all compliance issues, including those arising under the Recovery Act and the Appropriations Act. If you have questions regarding this advisory or any other aspect of your employee benefit plans, please contact Bob Goldberg and/or Steven Davi.