



RESOURCES

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ALERT - COBRA Subsidy Benefits Extended and Expanded

On December 19, 2009, President Obama signed the Department of Defense Appropriations Act of 2010, which includes an extension and expansion of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) subsidy benefits that were originally made available earlier this year under the American Recovery and Reinvestment Act of 2009 (ARRA).

Under ARRA, employees who lost group health coverage due to an involuntary termination of employment between September 1, 2008 and December 31, 2009 ("assistance-eligible individual" or "AEI") were eligible for a 65 percent subsidy on their COBRA premiums for up to nine months. As March 1, 2009 was generally the first month in which an AEI could receive the subsidy, AEIs who had been receiving the subsidy since March, without an extension of the COBRA subsidy under ARRA, would have their subsidy expire November 30, 2009. In addition, employees who lose group health coverage due to an involuntary termination after December 31, 2009, would not be eligible for any COBRA subsidy under ARRA, without an extension.

As a result of the new law, the COBRA subsidy benefits under ARRA are changed in three significant ways. First, eligibility for the COBRA subsidy is extended to employees who lose group health coverage due to an involuntary termination of employment through February 28, 2010. Second, the maximum COBRA subsidy period is expanded to 15 months. Third, eligibility for the COBRA subsidy is available for involuntary terminations occurring on or before February 28, 2010, even if the COBRA coverage period would begin after such date.

Employers will again be required to modify their COBRA procedures, to reflect the new law.

- Individuals who exhausted the original nine-month subsidy period before the new law takes effect can get the subsidy for another six months (if they remain AEIs and their COBRA period hasn't ended). As a result:
 - Employers must notify AEIs who exhausted the nine-month subsidy period, and then dropped COBRA coverage, that they now may be "reinstated" into their COBRA coverage by paying the subsidized premiums for any month in which they have not paid such premium. Employers must provide this notice by February 17, 2010, and AEIs who wish to be reinstated into their COBRA coverage must make payment by that same date, or if later, within 30 days of receiving the employer's notice. **Even though employers have until February 17, 2010 to provide this notice, providing the notice earlier reduces the risk of "adverse selection" to the employer's health plan.**
 - Employers must notify AEIs who exhausted the nine-month subsidy period, but kept COBRA coverage by paying unsubsidized premiums, that they may receive a credit for, or reimbursement of overpayments. Employers must provide this notice within 60 days of the AEI first overpaying for COBRA.
- Employers must notify all AEIs of the new subsidy provisions, even those who have not yet exhausted their original nine-month subsidy period.
- Employers must revise their COBRA forms to reflect the new subsidy provisions and provide revised forms to anyone who is still within their COBRA election period, or who has a subsequent COBRA qualifying event.

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If you have any questions regarding the COBRA subsidy changes, please contact your Briggs and Morgan attorney or a member of the Employee Benefits Group.

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