

To: Clients and Friends
From: Smith & Downey
Date: December 28, 2009
Re: COBRA Subsidy Changes

The Congress passed, and the President signed on December 19, legislation making changes to the COBRA subsidy rules originally enacted earlier this year as part of the American Recovery and Reinvestment Act of 2009.

In very general terms, the new legislation makes the following changes to the COBRA subsidy rules:

1. Individuals eligible for COBRA because of involuntary terminations of employment (other than for gross misconduct) between September 1, 2008 and February 28, 2010 can qualify for the subsidy. (Before the new legislation, the cut-off date was December 31, 2009.)
2. The duration of the COBRA subsidy period is now 15 months (rather than the former nine months).
3. Employers must provide specified notices about the new rules by February 17, 2010. These notices must be provided to: a. individuals who are "assistance eligible individuals" on or after October 31, 2009; and b. individuals who have the COBRA Qualifying Event of termination of employment (other than for gross misconduct) on or after October 31, 2009.
4. Information about the new subsidy rules must be included in regular COBRA Qualifying Event Notices provided to individuals with Qualifying Events after December 19, 2009.
5. Assistance eligible individuals who dropped COBRA after their nine-month ARRA subsidy periods expired must be given a specified notice, by a specified deadline, of their right to pay, before February 18, 2010 (or, if later, the date 30 days after they receive written notice of this rule from their employers), retroactive subsidized premiums for coverage for the period beginning after the end of their nine-month ARRA subsidy period and December 19, 2009 (and to elect and pay for any remaining subsidized COBRA months after December 19, 2009).
6. Assistance eligible individuals who paid a full premium during the period after their nine-month ARRA subsidy period and before the new 15-month subsidy period would have expired must be provided with a refund or a credit against future premiums (as elected by the employer and as described in a prescribed form of written notice provided by the employer by the deadline described in 5, above).
7. The changes apply to State continuation coverage to the same extent as did the original subsidy provisions. So, for insured coverage that is subject to State continuation coverage

requirements, to the extent that the State provides for continuation coverage for a period that would be covered by the subsidy, the subsidy would be available to anyone who qualifies as an assistance eligible individual for purposes of that coverage.

The DOL has suggested that it will publish models of the various notices required by the new legislation. In the meantime, some employers are considering providing summary notices of these new rules to affected individuals.

All employers should consult with their COBRA administrators, or insurance carriers, to ensure that all of the requirements of the expanded subsidy rules are satisfied by their plans.

Please contact us if we can be of assistance with your attempts to comply with these new rules.