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EBEC (Employee Benefits / Executive Compensation) Law Update

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EXTENSION OF FEDERAL COBRA SUBSIDY

Legislation enacted December 19, 2009 extends the duration of the stimulus act 65% COBRA premium subsidy for employees involuntarily terminated from 9 months to 15 months, and extends the eligibility period to terminations occurring on or prior to February 28, 2010.

Original Stimulus Act COBRA Subsidy. Originally, as part of the [American Recovery and Reinvestment Act of 2009](#), P.L. 111-5, Feb. 17, 2009 ("ARRA" or the "Stimulus Act"), the federal government created a temporary nine-month government subsidy of 65% of the COBRA continuation health coverage premiums for employees involuntarily terminated between September 1, 2008 and December 31, 2009. ARRA, Part B, Title III, § 3001. That subsidy took effect for most plans on March 1, 2009, meaning that the government subsidy expired for such participants on November 30, 2009. Additionally, it only applied to those involuntarily terminated between September 1, 2008 and December 31, 2009.

Department of Defense Appropriations Act Extension of COBRA Subsidy. Toward the end of 2009 several bills were introduced in Congress to extend the COBRA subsidy, because of the economy's slow rate of recovery and continued layoffs. One of the bills was attached to, and passed as part of the [Department of Defense Appropriations Act for Fiscal Year 2010](#), (the "DOD Act"), Division B § 1010. It was signed by President Obama on December 19, 2009 and is effective as of Feb. 17, 2009 (the Stimulus Act's effective date).

COBRA Subsidy Eligibility Period Extended 2 Months to 2/28/10. The DOD Act extends the COBRA premium subsidy eligibility period for an additional two months, and therefore it would apply for involuntary terminations through Feb. 28, 2010 rather than Dec. 31, 2009. DOD Act § 1010(a) amending ARRA § 3001(a)(3).

- ❖ There is currently legislation proposed that would further extend the COBRA eligibility period for the subsidy to June 30, 2010.

COBRA Subsidy Duration Extended for Six Additional Months (for Total of 15 Months). The DOD Act also extends the duration of the premium subsidy for 6 months, and the subsidy therefore will be for 15 months rather than 9 months. This applies to all involuntary terminations between September 1, 2008 and Feb. 28, 2010 where COBRA is elected. DOD Act § 1010(b) amending ARRA § 3001(a)(2).

- ❖ The phase-out of the subsidy for high-income individuals remains unchanged. The subsidy is phased-out for single filers with adjusted gross income of between \$125,000 and \$145,000, or for joint filers with adjusted gross income of between \$250,000 and \$290,000. IRC § 139C.

Retroactive Payment for Transition Period. With respect to the transition period, the DOD Act allows retroactive payment for the COBRA coverage through February 17, 2010 (i.e., 60 days after enactment), or if later within 30 days after receipt of notice of the subsidy extension. DOD Act § 1010(c) adding subparagraph (16) to ARRA § 3001(a). The premium must include the period from when the COBRA coverage was originally lost. The “transition period” is the period from when the COBRA subsidy would have ended and the enactment of the extension in the DOD Act. *Id.*

Refund or Credit for Overpayments. Overpayments of premiums for the transition period shall be reimbursed or applied toward future payments. *Id.*

Notice Requirement. Notification of the amendments made to the COBRA subsidy by the DOD Act within 60 days after enactment (i.e., by Feb. 17, 2010) is required for individuals who were eligible for the COBRA subsidy on or after October 31, 2009 or experienced a termination qualifying event on or after such date. Eligible individuals who lost the subsidy because they did not timely pay for continued COBRA must be notified of their ability to make retroactive payment for the transition period. DOD Act § 1010(c) adding subparagraph (16)(D) to ARRA § 3001(a).

- ❖ The DOL has indicated that it plans to issue revised model COBRA notices.

Clarification that Eligibility for the COBRA Subsidy is Tied to Date of Qualifying Event. The DOD Act provides that eligibility for the COBRA subsidy does not depend on the loss of coverage but rather the date of the qualifying event. Thus, if a termination qualifying event occurs in February of 2010 but the individual does not lose coverage until March 1, 2010, the beneficiary is entitled to the COBRA subsidy even though the loss of coverage did not occur until March 1, 2009. DOD Act § 1010(d) amending ARRA § 3001(a)(3) & 3001(a)(7).

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