



# THE KULLMAN FIRM

A PROFESSIONAL LAW CORPORATION

## SPECIAL BULLETIN

### COBRA SUBSIDY EXTENDED AND EXPANDED

The Department of Defense Appropriations Act for Fiscal Year 2010, which the President signed December 19, 2009, included provisions extending and expanding the COBRA premium subsidy that was created by the American Recovery and Reinvestment Act of 2009 (ARRA).

**Background.** In general, under ARRA, employees who were involuntarily terminated other than for gross misconduct and elected COBRA continuation coverage were required to pay only 35% of the premium that otherwise would have applied for periods of coverage beginning on or after February 17, 2009. The subsidy applied to involuntary terminations that occurred between September 1, 2008, and December 31, 2009, and was available for up to nine months.

**Subsidy Extended.** The new law extended the December 31, 2009, ending date by two months so the subsidy now applies to involuntary terminations that occurred between September 1, 2008 and February 28, 2010. The new law also clarified that if the involuntary termination occurs on or before February 28, 2010, the individual can be subsidy-eligible even if the COBRA coverage does not begin until after that date. Thus, if an individual is laid off on February 15, 2010, and remains covered by the health plan until the end of February, he can still be subsidy-eligible even if the COBRA coverage begins March 1, 2010.

**Subsidy Expanded.** The new law extended the maximum period of the subsidy from nine months to 15 months. Since the 18-month COBRA coverage period was not extended, the COBRA premium subsidy would not be available during the last three months (or the last 14 months if the COBRA disability extension applied).

**Retroactive Premium Payments.** If a subsidy-eligible individual dropped COBRA coverage after the nine-month subsidy ended, the plan must give the individual the right to reinstate his coverage by paying the subsidized premium by the later of February 17, 2010, or 30 days after the plan notifies the individual of the changes made by the new law.

**Overpayments.** If an individual who exhausted the nine month subsidy continued coverage by paying the full COBRA premium, the plan must refund the premium or credit the 65% overpayment against future premiums for up to six months of coverage.

**Notice Requirements.** Plans will have to revise notices of the right to elect COBRA coverage to reflect the new law. In addition, notice of the changes made by the new law will have to be provided to those who qualify as subsidy-eligible individuals on or after October 31, 2009, and individuals who have a COBRA-qualifying event of employment termination (even if it is voluntary) on or after October 31, 2009. This notice must be provided by February 17, 2010. In addition, notice of the new law's changes must be provided consistent with COBRA's normal election notice timing rules to individuals who have a qualifying event after December 19, 2009.

For subsidy-eligible individuals who have the right to make retroactive premium payments or who are entitled to a premium refund or credit because of the new law (as described above), the plan must provide such individual an additional notice with information about the COBRA subsidy extension, including information about the ability to make retroactive premium payments to maintain COBRA coverage. This notice must be provided within 60 days after the end of the individual's nine-month COBRA subsidy period.

In the next few weeks, the Department of Labor is expected to issue model notices to comply with this new law. If you have any questions, please call the attorney with whom you normally work.



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