



new cobra requirements

MSK Client Alert

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by Robert J. Lowe

President Obama recently signed legislation: (1) extending the maximum COBRA subsidy period from 9 months to 15 months; and (2) extending the last day of the period during which individuals may become eligible for the subsidy because of involuntary termination of employment from December 31, 2009, to February 28, 2010. The subsidy was originally enacted in February 2009 so that eligible health-plan participants would have to pay only 35 percent of the applicable COBRA premium.

Individuals who are eligible for additional COBRA subsidies because of this extension can pay their portion of the COBRA premium until 60 days after enactment of this new statute or 30 days after receipt of a special notice (described below), whichever is later.

The statute includes two notice requirements:

1. If a participant was eligible for the COBRA subsidy at any time on or after October 31, 2009, or experienced a qualifying event consisting of termination of employment on or after that date, the Plan must provide that individual with an additional notice explaining the extension legislation by February 17, 2010. If an individual experiences a qualifying event after the date of enactment (12/21/09), the extension legislation must be described with the regular COBRA notice.
2. Individuals who are in a "transition period" must be provided notice within 60 days of the first day of the transition period. An individual's "transition period" is the period that begins immediately after the end of the maximum number of months (generally nine) of premium subsidy available prior to enactment of the new law. An individual is in a transition period only if the premium subsidy provisions would continue to apply due to the extension from 9 to 15 months and he/she otherwise remains eligible for the COBRA subsidy.

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The Department of Labor has issued new model COBRA notices in order to help employers comply with these requirements. There are both updated general notices as well as a model notice for individuals whose entitlement to the subsidy had expired under prior law.

If you have participants for whom the 9-month original subsidy expired on November 30, 2009, this model "Premium Assistance Extension Notice" would be due by January 29, 2010. For participants for whom the original 9-month subsidy expired on December 31, 2009, the notice would be due by March 1, 2010.