

To: Our Clients and Friends

March 4, 2010

COBRA Subsidy Extended and Expanded

On March 2, 2010, President Obama signed the “Temporary Extension Act of 2010,” extending the eligibility period for the COBRA premium subsidy for another month and expanding the group of individuals who may be eligible for the subsidy, among other changes.

Eligibility Period Extended

Under the new law, individuals who lose group health coverage due to an involuntary termination of employment that occurs on or before March 31, 2010, and who otherwise qualify as “assistance eligible individuals”* may pay a reduced COBRA premium of 35% of the amount otherwise due for a period of up to fifteen months.

Broader Group Eligible for Subsidy

Before this law was passed, an “assistance eligible individual” was required to lose group health coverage due to one particular COBRA qualifying event – an involuntary termination. Now, a person who loses coverage due to a reduction in hours that occurs between September 1, 2008 and March 31, 2010, who then experiences an involuntary termination on or after March 2, 2010, can be eligible for a COBRA subsidy if he or she otherwise meets the statutory requirements. This does not extend the individual’s period of COBRA coverage.

With this change comes a new COBRA notice requirement. Group health plan administrators must provide a new notice containing information on this new eligibility provision to individuals who are assistance eligible individuals on the basis of a reduction in hours followed by an involuntary termination of employment. This notice must be provided within 60 days of the worker’s involuntary termination of employment.

* Under prior law, an “assistance eligible individual” was generally either the employee or a member of his/her family who:

- had a qualifying event for continuation coverage under COBRA or a State law that provides comparable continuation coverage (for example, so-called “mini-COBRA” laws) that was the employee’s involuntary termination at any point from September 1, 2008 through February 28, 2010;
- elected COBRA coverage timely; and
- was not eligible for coverage under another group health plan or Medicare.

Support for an Employer’s Determination of “Involuntary Termination”

An employer’s determination that a participant experienced an involuntary termination, which is based on a reasonable interpretation of the subsidy laws and guidance, will be upheld for purposes of claiming a tax credit for reimbursement of the 65% subsidy. In order to obtain this protection, the employer must maintain supporting documentation, including an attestation of involuntary termination with respect to the employee.

Other Changes Made

The new law includes several clarifications of the previously enacted COBRA subsidy law and contains new provisions related to enforcement. The Secretary of Labor or Health and Human Services, as applicable, may assess a penalty against a group health plan sponsor of \$110 per day for each failure to comply with the Secretary’s determination that an individual is entitled to the subsidy after an expedited review of a plan’s denial of eligibility for the subsidy, if the plan does not comply with the determination within 10 days of receipt.

The attorneys in the Employee Benefits and Executive Compensation Group of Bryan Cave LLP are available to assist with compliance related to this new law.

Please feel free to contact any member of the Bryan Cave LLP Employee Benefits and Executive Compensation Group listed below if you require assistance or have any questions regarding the information contained in this Bulletin.

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