

To: Our Clients and Friends

December 22, 2009

President Signs COBRA Subsidy Extension

On December 21, the President signed the Fiscal Year 2010 Defense Appropriations Act, which included an extension for the COBRA premium subsidy that was included as part of the stimulus bill back in February (see [New COBRA and Special Enrollment Rights Affecting Your Employees!](#)). The bill extends eligibility for the ARRA premium reduction for an additional two months (through Feb. 28, 2010) and the maximum period for receiving the subsidy for an additional six months (from nine to 15 months).

Plan administrators will have to provide notice of this extension to individuals who failed to pay their COBRA premium for this additional six month period or who paid the full COBRA premium for such period. For individuals who previously received, or are receiving, only nine months of premium assistance, the notice must be provided within the first 60 days of the six-month extension period.

Individuals who had reached the end of the subsidy period before the legislation extended it to 15 months will have additional time to pay the reduced premiums related to the extension. To continue their coverage these individuals must pay the 35% of premium costs by February 19, 2010 or, if later, 30 days after notice of the extension is provided to them.

Plan administrators will also be required to provide notice of the new law's provisions within 60 days after its enactment to any individual whose qualifying event was a termination of employment on or after October 31, 2009.

The legislation clarified that eligibility for the subsidy is based on the time of the qualifying event, not when coverage ceases. This means that eligibility for the subsidy depends on when the employee's involuntary termination occurs. Previously, the IRS had stated that the employee's involuntary termination and the loss of coverage must both occur during the subsidy eligibility period. This IRS interpretation meant that individuals would potentially become ineligible for the subsidy if, for example, the employee had an involuntary termination of employment in the last month of the subsidy eligibility period and the plan continued coverage through the end of the month. Under this legislative revision, such individuals would now clearly be eligible for the subsidy.

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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