

COBRA Subsidy Extended Again

The Temporary Extension Act of 2010 (TEA), signed into law on March 2, 2010, extends the previously established COBRA subsidy program by extending to March 31, 2010 the period during which an involuntary termination of employment triggers eligibility for the 65% premium subsidy. The TEA also expands eligibility to individuals who lost coverage due to a reduction in hours and were later involuntarily terminated, implements an additional enforcement penalty, and provides guidance regarding the determination of whether an employee's termination was involuntary.

For individuals who became eligible for the COBRA subsidy when it was first available on March 1, 2009, the nine-month premium subsidy period ended on November 30, 2009. A subsequent amendment extended the period of eligibility for subsidy relief to February 28, 2010 and extended the duration of the subsidy from nine months to 15 months. The TEA extension now provides additional subsidy relief for COBRA qualified beneficiaries who are involuntarily terminated on or before March 31, 2010.

In addition, under the TEA individuals whose qualifying event was a reduction in hours but who were ultimately involuntarily terminated on or after March 2, 2010 are now eligible for the subsidy. The subsequent involuntary termination is now also deemed a qualifying event, even if the individual did not elect (or elected and discontinued) COBRA continuation between the initial reduction of hours and the ultimate involuntary termination. In the case of an election made under this rule, the period of continuation coverage begins as of the date the reduction of hours of employment occurred, although individuals are not required to elect and pay for COBRA coverage for the period between the reduction of hours and involuntary termination. Group health plans are required to provide notice to employees who are eligible to elect COBRA continuation coverage as a result of this rule. The notice must be provided within 60 days following the date of the involuntary termination. We expect that the [Department of Labor's Employee Benefits Security Administration website](#) will provide the most up-to-date information and notices regarding the TEA subsidy extension.

Under the TEA, group health plan sponsors that fail to comply with the Secretary of Labor's determination that an employee who appealed an employer's denial of the COBRA subsidy is, in fact, eligible for such subsidy are subject to civil enforcement actions and relief, and the Secretary may impose a penalty of up to \$110 per day for each failure to comply.

Finally, the TEA clarifies that an employer's determination that a termination of employment was involuntary will be respected, so long as that determination is based on a reasonable interpretation under applicable guidance that the qualifying event was an involuntary termination. However, the employer must maintain documentation supporting the determination, including an attestation by the employer of involuntary termination with respect to the covered employee.

For more information on the expanded COBRA subsidy program, please contact any member of Ropes & Gray's Employee Benefits Practice Group or your usual Ropes & Gray advisor.

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