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## Labor and Employment Update: COBRA Premium Assistance Extended

By Erwin D. Kratz

On December 19, 2009, the President signed into law the 2010 Department of Defense Appropriations bill, which includes legislation extending the COBRA premium assistance provisions originally enacted in the American Recovery And Reinvestment Act Of 2009 (ARRA).

### Existing COBRA Premium Assistance Law

Under the ARRA, anyone involuntarily terminated between September 1, 2008 and December 31, 2009 (and their COBRA qualified beneficiaries) who becomes eligible for COBRA before December 31, 2009 is a COBRA Assistance Eligible Individual ("AEI"). An AEI pays 35% of their normal COBRA premium and receives a subsidy equal to 65% of their COBRA premium for up to nine months. Therefore, under the ARRA as originally enacted, AEIs who started receiving premium assistance as of March 1, 2009 exhausted their eligibility for premium assistance as of November 30, 2009, and AEIs who started receiving assistance as of April 1, 2009 would have exhausted their eligibility for premium assistance as of December 31, 2009.

### The Extension

The extension just enacted extends the COBRA assistance period for all AEIs from 9 months to 15 months and extends the window for an involuntary termination of employment to trigger eligibility for the assistance from December 31, 2009 to February 28, 2010.

The bill also adjusts a "glitch" in the original law. Under the new law, an AEI who has a qualifying event that is the involuntary termination of employment occurring on or before the extended February 28, 2010 date is eligible for premium assistance, regardless of when their COBRA coverage period begins. Previously, both the involuntary termination and the COBRA eligibility had to occur before the end date (December 31, 2009 under the law before the extension was passed). This means that individuals who are involuntarily terminated in February 2010 (and their qualified beneficiaries) who do not become eligible for COBRA until March 1, 2010 will still qualify for premium assistance for up to the full 15 months.

### Premium Adjustments

Individuals who previously exhausted their eligibility for premium assistance after 9 months and did not continue paying their COBRA premium are given a transition period during which they can retroactively pay their reduced COBRA premium. In addition, anyone whose eligibility for premium assistance expired at the end of November 2009 and who has since paid the full COBRA premium will be entitled to a refund or credit of their overpayment, under similar rules as applied when the ARRA was originally passed.

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## Supplemental Notices

Plan administrators must update their COBRA eligibility and election notices to include the extended assistance information. Plan administrators also need to provide a supplemental notice regarding the extension to everyone who was eligible for premium assistance at any time on or after October 31, 2009, and to anyone who experienced a qualifying event (consisting of a termination of employment) relating to COBRA continuation coverage on or after October 31, 2009.

## Future Developments

Congress is considering additional legislation to further extend and expand COBRA premium assistance and may also pass comprehensive health care reform early in the New Year, both of which will impact group health plan administration in general and COBRA administration in particular.

## Webinar

Join us at 12 Noon Mountain Standard Time on Tuesday January 12, 2010 for an informative webinar regarding what employers and plan administrators need to do to comply with the COBRA premium assistance extension just enacted, and what to look out for under the other proposals working their way through Congress.

Register for the webinar online here: <http://www.fclaw.com/seminar/registration.cfm?ID=618>

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