



COBRA PREMIUM SUBSIDY EXTENDED TO 15 MONTHS

As we informed you last week, the Senate has now joined the House of Representatives in passing legislation to extend the federal government's 65% COBRA premium subsidy. President Obama signed the bill into law on December 19, 2009. This date will therefore constitute the bill's "enactment date," to which many of the deadlines specified in the bill are tied.

What's Changed? What Hasn't?

This extension preserves the 65% premium subsidy, and it continues to limit the subsidy to involuntary terminations of employment. Earlier extension bills had reflected subsidies ranging from 50% to 75%, and some bills had proposed expanding the subsidy to include COBRA coverage attributable to reductions in work hours.

The key *changes* made by this bill are:

- (1) an extension of the maximum subsidy period from 9 months to 15 months,
- (2) an extension of duration of the premium subsidy. Under ARRA, assistance eligible individuals were entitled to a subsidy for up to 9 months of their COBRA maximum coverage period. The maximum period for receiving the COBRA premium subsidy has been extended for an additional 6 months, to 15 months.
- (3) Note that these changes are *retroactively* applicable to individuals whose subsidy expired in November (i.e., the ninth month after the subsidy first became available in February of 2009). As explained below, this retroactive reinstatement of the subsidy program will require further notices by employers and will also allow affected individuals an extended period of time to pay for December coverage.
- (4) Eligibility Based on Timing of Qualifying Event. The Act clarifies that for purposes of an individual's eligibility for the subsidy, as well as the timing of notices, the qualifying event is what matters, rather than eligibility for COBRA. That means, for example, that the qualifying event must occur on or before February 28, 2010 and the subsidy will apply even though COBRA doesn't start until March 1st in that circumstance.

Employer Notice Obligations

This extension imposes at least two new notification obligations. The DOL has informally stated that it intends to issue a new set of model notices about the COBRA subsidy extension. Albers & Company will monitor releases and provide you with updates and soon as they are announced. Adding to the complexity are additional proposed changes to the ARRA COBRA premium subsidy that are included in the Jobs for Main Street Act (H.R. 2847), recently passed by the House. These proposed changes include, among other things, an extension of eligibility for the program until June 30, 2010, and inclusion of certain reductions in hours as a qualifying event for assistance eligible individuals.

The Senate is expected to turn to the Jobs Act COBRA extension in January, but it isn't clear at this point whether additional notification will be required if it is enacted.

Step 1. Albers' hosted TeleWebs:

You're invited to join us for either of the following TeleWebs to learn more, including what plan sponsors need to do to administer those requirements. Among other issues, the presenters will discuss:

- What does the new law change (and what remains unchanged)?
- What are the notice requirements imposed by the new law, and when must notices be sent?
- What are the practical steps necessary to administer the new law?
- How will COBRA premium subsidies be affected by other pending legislation?

Thursday, January 7th Noon to 1:30 OR
Thursday, January 21st 10:00 to 11:30

[Register here](#) or call Allison Nickel at 253-596-0610 or 888-825-2377. Space is limited, so register soon.

Step 2.

COBRA ARRA "Additional Notification Subsidy Extension" notices currently in use can be revised to refer to the 15-month maximum subsidy period. Doing so could reduce the number of corrective notices that must be provided in the future. [Click here](#) for the Albers' updated Additional Notification Subsidy Extension model notice.

Step 3. Once model notices are released, we'll send you these notices:

Notice of Retroactive COBRA Rights

This notification will go to any "assistance eligible individual" (i.e., an individual who met the earlier requirements for taking advantage of the subsidy) who did not pay the premium for any period of COBRA coverage that began before the enactment date of this extension (December 19, 2009) and for which the subsidy would not be available but for the extension. (Because the individual must also be *eligible* for COBRA coverage during this extended period, he or she must have maintained COBRA coverage through the end of the original subsidy period.) This notice will also go to any assistance eligible individual who *overpaid* the premium for an extended coverage period – e.g., by paying the full premium amount.

Individuals who failed to pay the 35% premium needed to maintain their COBRA coverage under this extension provision will have 60 days after the bill's enactment date (or, if later, 30 days after receipt of the notice) in which to make the retroactive premium payments. If individuals overpaid a premium for this period, their employer must follow procedures similar to those that applied when the subsidy was first enacted. Thus, those overpayments should either be credited to future months of COBRA coverage or refunded to the individuals in cash.

Note that this notice of retroactive rights will likely apply to only a single month of coverage. Because President Obama has already signed the extension bill, any plan that offers COBRA coverage on a calendar-month basis would have to notify only those assistance eligible individuals who did not pay (or overpaid) for

December COBRA coverage. This is the only month that *both* began before the extension was enacted *and* may not have been subject to the subsidy prior to the extension (i.e., for those individuals who were eligible for the extension as early as March 1, 2009).

Affected individuals must be notified of their retroactive rights under this extension bill within 60 days of the date they either let their COBRA coverage *lapse* (due to nonpayment of premiums) or *overpaid* the premium for such coverage. This deadline would be January 29, 2010, for calendar-month plans, but could be even earlier for plans that measure coverage periods on some other basis. Affected individuals would then have at least 30 days after receipt of that notice to make the retroactive premium payment. Note that this extended deadline could be well after the close of the grace period for paying *January* COBRA premiums.

Notice of Prospective COBRA Rights

Once this retroactive notice has been provided, plan sponsors and COBRA administrators should turn their attention to the second notice required by this extension bill. This prospective notice must be provided within 60 days after the bill's enactment date (i.e., by February 17, 2010), and it must go to all individuals who were assistance eligible individuals on or after October 31, 2009. The notice must explain the changes made by the extension bill, particularly the fact that the 9-month subsidy period referenced in their original COBRA notice has now been extended to 15 months.

Nothing in this bill extends the maximum period of COBRA coverage. Accordingly, an individual whose involuntary termination of employment led to COBRA coverage commencing on October 1, 2008 – and whose premium subsidy thus began on March 1, 2009 – would still exhaust his or her 18 months of COBRA coverage on March 31, 2010. This is true even though such an individual would have received only 13 months of subsidized coverage.

This same prospective notice should be provided to all employees who experience a termination of employment on or after October 31, 2009, (assuming that termination also causes a loss of coverage, and is therefore a COBRA qualifying event). As with the notices required when the premium subsidy was first enacted, this notice should go to *all* terminated employees, regardless of whether the termination was voluntary or involuntary.

Questions? As always, give us a call – 253-272-2711 or 888-8ALBERS (825-2377). That's why we're here.

This information is provided as a courtesy by Albers & Company as a starting point in assessing your obligations under Washington State's everything but marriage law. As a licensed employee benefits broker we cannot provide legal or tax advice to you or your employees.