

**PRESIDENT OBAMA EXTENDS COBRA SUBSIDY IMPLICATIONS
FOR ELIGIBLE INDIVIDUALS AND PLAN ADMINISTRATORS**

On December 21, 2009, President Obama signed legislation that effective immediately extends the COBRA subsidy period, originally provided as part of the American Recovery and Reinvestment Act (ARRA), by six months and extends the eligibility period for the COBRA subsidy through February 28, 2010. This extension does not change the length of time an individual is eligible for COBRA continuation coverage itself, however. It only applies to subsidized premiums during the statutory 18-month COBRA continuation period.

ARRA's provisions, which became effective on March 1, 2009, included a nine-month 65% federal subsidy of COBRA premiums for eligible individuals. This permitted individuals who were involuntary terminated from employment between September 1, 2008 and December 31, 2009 to pay only 35% of the COBRA premiums and allowed employers to receive federal reimbursement through a payroll tax credit for the remaining 65% for a period of nine months. Please see Brown Rudnick's March 4, 2009 Client Alert entitled "COBRA Health Insurance Continuation Subsidy" for a thorough description of the subsidy as originally enacted.¹

The provisions of this new legislation have important implications for both employees and employers, as outlined below. Most importantly, individuals who had reached the end of the COBRA subsidy period prior to the signing of this legislation will be able to benefit from the reduced premiums related to the extension.

Important Changes for Eligible Individuals:

1. The subsidy eligibility period has been extended by two months, through February 28, 2010;
2. Eligible individuals may receive the subsidy up to a maximum period of 15 months. The previous limit was nine months;
3. Individuals receiving COBRA continuation benefits prior to the effective date of this legislation will qualify for the extension, provided the initial qualifying event was an involuntary termination of employment;
4. Eligible individuals who paid COBRA premiums in excess of the 35% subsidy on or after October 31, 2009 are entitled to a refund equal to the amount of premiums paid in excess of the 35% subsidy; and
5. Eligible individuals who discontinued COBRA continuation coverage on or after October 31, 2009 due to the end of their nine-month subsidy period are entitled to retroactive reinstatement provided they pay the 35% of premium costs by February 19, 2010 or, if later, 30 days after notice of the extension is provided by their plan administrator.

¹<http://www.brownrudnick.com/nr/pdf/alerts/Brown%20Rudnick%20ALERT%20Employment%20COBRA%20updates%203-09.pdf>

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New Requirements for Plan Administrators:

No later than February 19, 2010, administrators of group health plans must issue a notice describing the COBRA changes to individuals who were eligible for the subsidy or who experience(d) a COBRA qualifying event at any time on or after October 31, 2009. This notice should describe:

1. The extension of the maximum COBRA subsidy period from 9 months to 15 months;
2. The extension to February 28, 2010, of the qualifying date for an involuntary termination entitling the COBRA qualified beneficiary to the COBRA subsidy as an "assistance eligible individual";
3. The right of qualified beneficiaries whose COBRA terminated after October 31, 2009 (due to failure to pay the higher COBRA premium) to reinstate coverage retroactively by paying the subsidized premium (the 35% amount) by February 19, 2010, or by 30 days after the notice is provided, whichever is later; and
4. The right of assistance eligible qualified beneficiaries who paid the unsubsidized premium for COBRA for periods after October 31, 2009, to receive a refund or obtain a credit of the overpaid amount.

Brown Rudnick will keep you informed of further developments with regard to the enactment of the COBRA subsidy extension.

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