



ATTORNEYS AT LAW

ADVISORY BULLETIN – January 21, 2010

DOL ISSUES GUIDANCE ON THE COBRA SUBSIDY EXTENSION

On January 13, 2010, the U.S. Department of Labor issued guidance regarding the [Fiscal Year 2010 Defense Appropriations Act](#) (the “2010 Act”) which extended and expanded the COBRA subsidy. See our [January 4, 2010](#) Advisory Bulletin for a summary of the 2010 Act. The guidance includes a [Subsidy Extension FAQ](#) and [Updated Model Notices](#).

Subsidy Extension FAQ

In pertinent part, the FAQ provides the following guidance and clarifications:

- Retroactive premium payments may be made for December 2009 *and* January 2010.
- Individuals may make retroactive payments before receiving updated notices or invoices.
- If an employer receives a notice of eligibility for other group health coverage or Medicare from an employee before the deadline for providing such employee a subsidy extension notice, then the employer is not required to send such employee a subsidy extension notice.
- The extension applies to state-mandated coverage provisions (i.e. “mini-COBRA” laws).

Updated Model Notices

The DOL also updated its model subsidy notices to reflect the subsidy extension. The notice requirements are as follows:

Updated General Notice

Plans must provide an Updated General Notice to all qualified beneficiaries—not just those eligible for the subsidy—who (i) experience *any* type of qualifying event from September 1, 2008 to February 28, 2010 and (ii) have not yet received a COBRA election notice. Those who experience an involuntary termination of employment after December 19, 2009 must receive the Updated General Notice within the normal COBRA notice deadlines.

Premium Assistance Extension Notice

Plans must provide the Premium Assistance Extension Notice to those individuals who have received a COBRA election notice that did not include information about the subsidy and its extension. Specifically, those (1) who were eligible for the subsidy as of October 31, 2009 and are not in a “transition period” (see below); (2) who experienced a termination of employment on or after October 31, 2009, lost health coverage, and were not already provided a timely Updated General Notice; or (3) who are in a “transition period.” A “transition period” is the period immediately following the end of the original maximum nine month subsidy period.

Those in category 1 or 2 must receive their notices by February 17, 2010. Those in category 3 must receive their notices within 60 days of the first day of their transition period. For example, those whose 9 month subsidy period ended (and, thus, whose transition period began) on November 30, 2009 must receive their notice by January 29, 2010.

Updated Alternative Notice

Insurance issuers must send the Updated Alternative Notice to those who became eligible under state mini-COBRA laws. As before the 2010 Act, the Updated Alternative Notice must be modified to comply with different state mini-COBRA laws.

If there is an overlap between those covered by the Updated General Notice and the Premium Assistance Extension Notice, then a plan may satisfy the notice requirement by just providing the Premium Assistance Extension Notice by the earliest date that it is required.

Please contact either Ken Johnson [(336) 271-5264] or David Bury [(336) 271-5266] if you have any questions concerning the COBRA subsidy or the 2010 Act.

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