

**COBRA Subsidy Extended – Stopgap  
New Rules for Reduced Hour Employees**

**March 2010**

President Barack Obama signed the Temporary Extension Act of 2010 into law, which provides a 31-day extension of eligibility for the COBRA subsidy that was initially provided in the American Recovery and Reinvestment Act of 2009 (ARRA). Employees who are involuntarily terminated from March 1, 2010 through March 31, 2010 are now eligible for up to 15 months of subsidized continuation coverage. Furthermore, additional legislation has been proposed which will extend the premium subsidy to employees laid off through December 31, 2010.

The Temporary Extension Act also addresses eligibility of coverage for those employees who lose health coverage due to a reduction in hours but are not eligible for the subsidy when they are later involuntarily terminated. In order for these employees to have a new opportunity to elect COBRA and be eligible for the subsidy, the facts must satisfy certain conditions:

- The individual must have first lost coverage because of a reduction in hours at any time between September 1, 2008 and March 31, 2010;
- No COBRA election was made (or was made and discontinued) on the basis of the reduction in hours; and
- Employment was involuntarily terminated on or after March 2, 2010.

If these conditions are satisfied, the involuntary termination of employment will be treated as a qualifying event and a new election period of 60 days is created. However, for purposes of calculating the duration of the continuation coverage, the period will be counted from the reduction in hours rather than the involuntary termination. In this case the employee may elect COBRA coverage for the period following termination of employment without the need to pay for COBRA coverage for the gap between the reduction in hours and the involuntary termination of employment.

For example, an employee who lost medical coverage on July 1, 2009 due to a reduction in hours is later terminated on March 31, 2010. The employee did not elect COBRA when his hours were reduced. This employee is eligible for the subsidy for the period following his termination of employment (i.e. March 31, 2010). However, the duration of the subsidy will be only six months because the 15-month period for the subsidy is counted from July 1, 2009.

Plan administrators are required to provide these individuals with the COBRA notice that includes information about this opportunity within 60 days of the involuntary termination. Presumably, the Department of Labor will update the Model Notice to address these issues.

The Temporary Extension Act also gives employers clear authority to determine whether a termination of employment is involuntary, provided the determination is based on a reasonable interpretation of the statute

and administrative guidance issued about the COBRA subsidy. Employers must maintain supporting documentation for the determination, including an attestation by the employer of the involuntary termination of the employee.

Keenan & Associates will continue to monitor the progress of the legislation that has been introduced, as well as any modifications to the Model Notice by the Department of Labor. Should you have any questions regarding this, or any other *Briefing* issued by Keenan, please contact your service team.

Keenan & Associates is not a law firm and no opinion, suggestion, or recommendation of the firm or its employees shall constitute legal advice. Clients are advised to consult with their own attorney for a determination of their legal rights, responsibilities and liabilities, including the interpretation of any statute or regulation, or its application to client's business activities.