



## Labor & Employment Alert January 2010

### Congress Extends and Changes COBRA Subsidy Program

*For a discussion of these and other issues, please visit the update on our website at [www.mhtl.com/law](http://www.mhtl.com/law). To receive mailings via email, please email [information@mhtl.com](mailto:information@mhtl.com).*

On December 19, 2009, President Obama signed into law the 2009 Department of Defense Appropriations Act ("DDAA"). As part of the DDAA, Congress made changes to the COBRA subsidy program instituted by the American Recovery and Reinvestment Act of 2009 ("ARRA"). The changes are effective immediately, and require immediate attention by employers.

#### ***Background***

Prior to ARRA, eligible employees electing COBRA paid up to 102% of the premium or cost of coverage. The employer had no responsibility for paying any part of the premium unless it voluntarily agreed to do so.

With the passage of ARRA on February 17, 2009, effective March 1, 2009, for most plans<sup>1</sup>, certain COBRA eligible employees could receive a subsidy of 65% of the COBRA premium for up to nine months. The subsidy applies to "COBRA continuation coverage" which is now defined to include not only "old" COBRA coverage under the original federal COBRA law, but *any* group health plan coverage subject to continuation coverage under federal or comparable state law with certain limited exceptions related to flexible spending accounts.

The subsidy is covered by the federal government, but employers are responsible for paying the money up front and recouping the cost from the government through either a payroll tax credit or by receiving a payment directly from the government. Under ARRA, the subsidy was available to individuals who were involuntarily terminated between September 1, 2008 and December 31, 2009 and who became COBRA eligible during that same period. Therefore, an employee involuntarily terminated in December, 2009 who had his or her regular health care benefits carried over until the end of the month and did not become COBRA eligible until January 1, 2010 would not have been eligible for the subsidy. This is one of the places where the DDAA makes a change.

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<sup>1</sup> calendar month plans



The ARRA also created new notice requirements, for which the Department of Labor issued new model notices. DDAA also includes new notice requirements.

***What changes did the DDAA make?***

The DDAA made changes that take effect immediately and in some cases are retroactive. First, the eligibility window for the subsidy has been extended through February 28, 2010. The statute also removes the requirement that the date of COBRA eligibility be within this eligibility window. For example, an individual who is involuntarily terminated in February 2010, but is not eligible for COBRA until March 1, 2010 or thereafter, would still be eligible for the subsidy. Further, employers must look at employees involuntarily terminated in December 2009 who did not become COBRA eligible until January 1, 2010. Under ARRA, the individuals would not have been eligible for the subsidy, but under DDAA, they are eligible.

The other major change made in the DDAA is that it extended the maximum period to receive the COBRA subsidy from 9 months to 15 months. Further, individuals who completed their 9 months of subsidies prior to the passage of the DDAA will now be given a chance to retroactively continue the subsidy program for an additional 6 months. The DDAA requires notices to those who were assistance eligible individuals on or after October 31, 2009 and special notices to those who used up their 9 months of subsidies and either dropped COBRA or continued to pay at the full premium level. The Department of Labor has created revised model notices to accommodate the additional notice requirements of the DDAA. You can find the model notices by visiting our web site at [www.mhtl.com](http://www.mhtl.com) or by visiting the [Department of Labor web site](#).

The DDAA did not make changes to the rules for cutting off individuals from the subsidy or to the method that employers should receive reimbursement.

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***For questions about pending or proposed laws or regulatory enforcement priorities, and how they will affect your operations, please contact Katherine Hesse or Brian Fox or the attorney assigned to your account.***

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