

LABOR
&
EMPLOYMENT

Laurence B. Oppenheimer, Chair
716.566.1575

loppenhe@hblaw.com

Stuart H. Brody

Susan M. Curtin

James P. Domagalski

Anne Burak Dotzler

James P. Evans

Thomas J. Hanifin

Christopher J. Harrigan

Robert P. Heary

Todd V. Lamb

Robert J. Lanza

Kathryn A. Lisandrelli

Carolyn A. Marcotte

Raymond N. McCabe

Scott M. Pechaitis

Alan R. Peterman

Joseph P. Pylman

Scott P. Rogoff

Margaret Surowka Rossi

Brian E. Whiteley

Congress Extends “COBRA Subsidy”

The House of Representatives voted on Saturday, December 19 to extend the COBRA subsidy for beneficiaries who would otherwise lose health care coverage due to involuntary layoff or dismissal. The extension was added to the Department of Defense Appropriations Act, H.R. 3326. The Senate had previously passed the bill. The President has signed the measure into law.

Background. The COBRA subsidy is part of the “American Recovery and Reinvestment Act of 2009” (“ARRA”) signed into law in February 2009. The ARRA included a Federal subsidy to defray 65 percent of the cost of COBRA premiums for nine months for persons who lose health coverage due to layoff or involuntary termination of employment between September 1, 2008 and December 31, 2009 (“assistance eligible individuals”). Under the subsidy program, the employer charges the assistance eligible individual only 35 percent of the individual’s COBRA premium for a period of up to nine months. The employer pays the balance of the individual’s COBRA premium and recoups its cost by claiming a credit on its Federal employment tax return (IRS Form 941).

New York State has implemented the subsidy program with respect to employers who are not subject to the Federal COBRA statute.

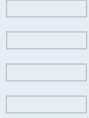
Two Extensions Added. The new Act extends the COBRA subsidy in two ways. First, the subsidy is now available to any assistance eligible individual who becomes eligible by reason of layoff or involuntary termination of employment (a “qualifying event”) occurring on or before February 28, 2010. Under prior law, the subsidy was available only to persons who became COBRA eligible on or before December 31, 2009.

Second, the new Act extends the period for which the subsidy is available from a maximum of nine months to a maximum of 15 months. As under prior law, the subsidy period ends earlier if the assistance eligible individual becomes eligible to participate in another group health plan or becomes eligible for Medicare.

New Notice Requirements and Payment Transition Rule. The new Act includes an additional notice provision. Sponsors of group health plans are required to notify every person who was an assistance eligible individual on or after October 31, 2009 of the subsidy extension.

(Continued on back)

Hiscock & Barclay is a full service, 210-attorney law firm, with offices throughout the major cities of New York State, as well as in Boston, Washington, D.C. and Toronto. We provide comprehensive legal and business counsel to a diverse client base in 29 specialized practice areas with statewide and regional expertise as well as with national and international capabilities.



Commercial Litigation
Construction & Surety
Corporate
Creditors' Rights
Economic & Project
Development
Energy & Utilities
Environmental
Financial Institutions &
Lending
Health Care & Human
Services
Immigration
Indian Law
Insurance Coverage &
Regulation
Intellectual Property &
Technology
Intellectual Property
Litigation
International Business
Labor & Employment
Lobbying & Election
Law Compliance
Media & First
Amendment Law
Municipal & Land Use
Professional Liability
Public Finance
Real Estate
Real Property Tax &
Condemnation
Regulatory
Sports & Entertainment
Tax
Telecommunications
Torts & Products
Liability Defense
Trusts & Estates

The new notice must be provided no later than 60 days after the new Act is signed into law. The sponsor must also provide a notice to any person who becomes subsidy eligible after the date of enactment no later than 30 days after that person's qualifying event. We expect that the Department of Labor will provide a model notice for plan sponsors to use.

The new Act provides that individuals will be deemed to have timely paid their subsidized COBRA premiums within the later of (i) 60 days after enactment of the subsidy extension or (ii) 30 days after receiving notice of the extension from the plan sponsor. Assistance eligible individuals whose coverage lapsed upon expiration of the subsidy under current law will be allowed to restore their COBRA coverage if payment is made within this transition period.

Clarification of Impact on Persons who Lose Their Job Prior to Expiration of the Subsidy. Earlier this month, the U.S. Department of Labor issued guidance stating that, to be eligible for the COBRA subsidy, the assistance eligible individual must become COBRA eligible before the subsidy legislation expired. Thus, based on the subsidy's prior December 31, 2009 expiration date, an assistance eligible individual who loses coverage due to involuntary termination or layoff occurring in December 2009 would not be eligible for the subsidy unless COBRA continuation coverage actually began in December. The new Act clarifies that eligibility for the subsidy is based on the date of the qualifying event (i.e. the date of layoff or dismissal), not the date the person becomes COBRA eligible. Thus, a person who has a qualifying event on or before February 28, 2010 will be eligible for a maximum 15-month COBRA subsidy, even if that person does not become COBRA eligible until March 2010 or later. ■

If you require further information regarding the information presented in this Legal Alert and its impact on your organization, please contact any of the members of the Practice Area listed on the front of this Alert.