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COBRA Subsidy Questions Answered

Summary:

On December 19, 2009 the President signed the Department of Defense Appropriations Act of 2010 (H.R. 3326). Section 1010 of this act revises the COBRA Premium Subsidy under the American Recovery and Reinvestment Act of 2009 (ARRA).

The full text of section 1010 of HR 3326 can be found at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3326enr.txt.pdf

Under the revisions:

- Current Assistance-eligible individuals (AIE's) who are on COBRA and receiving the COBRA Premium Subsidy will be able to continue for an additional six months (a total of 15 months).
- Employees who experience an involuntary termination of employment on or before February 28, 2010 and meet all other requirements will now be eligible for the COBRA Premium Subsidy.
- The new law eliminates the COBRA Premium Subsidy sunset provision that required COBRA to begin before the end of the eligibility period. Consequently as long as the involuntary termination is on or before February 28, 2010, the employee may be eligible for the COBRA Premium Subsidy.

We contacted the Department of Labor to get clarification on a couple of issues:

Q. Do current subsidy participants also get the extended time to pay the January, 2010 premium?

- A. The regulations do not specifically address this issue, however the DOL has said they would interpret the intent of the law to allow that both the December and January premiums be given the extension for payment. This means those employees who currently are on subsidy will have until 2/17/2010 or if later, 30 days from the date the notice is mailed to make the December and January premium payment.

Q. For those who are currently in the 60 day election period for COBRA and must receive the revised notice, do we need to extend the time that the COBRA election can be made?

- A. The law only requires that a revised notice be sent to those who terminated employment on or after 10/31/2009. There is no extension of the COBRA election period. This means, even if you provide the notice after the COBRA election period has ended, the person cannot elect COBRA. This will be confusing to some employees, but it is clear that a notice must be sent regardless of when the COBRA election period will or has ended.

Q. In some circumstances reduction of hours may be considered an involuntary termination (IRS 2009-27), should a revised notice be sent to those who experienced a reduction of hours?

- A. The eligibility of those who have a reduction of hours for the ARRA subsidy is a facts and circumstance situation. Consequently, if the reduction of hours meets the definition of involuntary termination a revised ARRA notice should be sent.

It should be noted that there is currently more legislation pending that may pass as early as this month. Included in the proposed regulation is the extension of the eligibility for the subsidy to those who experience a reduction of hours. Also being discussed is an extension of the subsidy eligibility period to 6/30/2010. Finally, there is still some talk about extending COBRA to 24 months. However, nothing new has been passed as of the date of this newsletter.

BCL Systems, Inc. will advise you as things progress and if you currently utilize our COBRA services, we will ensure you remain in compliance with this constantly changing area of employment law.

In the meantime, if you or your staff have any questions please feel free to contact BCL Systems, Inc. at 1-888-805-3915 and we would be happy to assist you.