

Employee Benefits and Executive Compensation

January 7, 2010

COBRA Subsidy Extended—Employer Action Required

At a Glance

- Subsidy eligibility period extended to February 28, 2010
- Subsidy duration extended to 15 months
- Employer notices required (**action needed in early 2010**)
- Retroactive application of extended subsidy

Background

The American Recovery and Reinvestment Act of 2009 (ARRA) introduced a COBRA continuation coverage premium subsidy allowing eligible individuals to pay only 35% of the regular COBRA premium. To be eligible for the original subsidy, an individual must have lost group health plan coverage due to an involuntary termination of employment, both of which had to occur between September 1, 2008, and December 31, 2009. The original subsidy could last for up to nine months.

For more information about the original COBRA subsidy, click [here](#).

Changes Have Been Made to the Original COBRA Subsidy

President Obama signed the Department of Defense Appropriations Act of 2010 (DDAA) into law on December 19, 2009. DDAA expanded the COBRA subsidy as follows:

Modification of Eligibility Requirements. Under the original subsidy COBRA subsidy, both the loss of coverage and the involuntary termination of employment that caused this loss must have occurred during an “eligibility window,” which was scheduled to end on December 31, 2009. DDAA revised the eligibility criteria by (1) extending the eligibility window to February 28, 2010, and (2) requiring that only the involuntary termination of employment (not the resulting loss of health plan benefits) must occur during the eligibility window.

Extension of the Subsidy's Duration. The COBRA subsidy period originally ended on the earliest of (1) the date the recipient became eligible for other group health plan coverage or Medicare, (2) the date the recipient lost eligibility for COBRA coverage, and (3) nine months from the date the recipient began the COBRA subsidy. DDAA extends this nine-month period to fifteen months.

If you have any questions about the changes to the COBRA subsidy, please contact your Katten attorney or any of the following members of the firm's **Employee Benefits and Executive Compensation Practice**.

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Additional Notice Requirements

DDAA requires plan administrators to issue a notice summarizing DDAA's changes to the COBRA subsidy. It should be noted that not all designated recipients of the notice will be entitled to the COBRA subsidy. Plan administrators must send the notice to the following:

1. *Assistance Eligible Individuals.* Individuals who were "assistance eligible individuals" on or after October 31, 2009 must be provided the notice by February 17, 2010. An "assistance eligible individual" is a person who becomes eligible for, and elects, COBRA continuation coverage due to an involuntary termination of employment between September 1, 2008, and February 28, 2010.
2. *Individuals Who Terminated Employment on or Before DDAA.* Individuals who lost their health coverage due to a termination of employment (even if voluntary) on or after October 31, 2009, and on or before December 19, 2009 must be provided this notice by February 17, 2010.
3. *Individuals Who Terminated Employment After DDAA.* Individuals who lose their health coverage due to a termination of employment (even if voluntary) after December 19, 2009, must be provided this notice by the same deadline that applies to general COBRA election notices. Accordingly, plan administrators could supply this notice simultaneously with the regular COBRA notice or revise their COBRA notices to include information about the DDAA changes.

An additional notice (described below) is required for certain individuals who are eligible for the COBRA subsidy due to DDAA's extension of the subsidy period to 15 months. Under DDAA, these individuals are considered to be in a "transition period," which begins when the original nine-month subsidy period expires and before December 19, 2009.

Retroactive Application

DDAA contains special provisions for individuals in the "transition period." For example, an individual who first became eligible for the COBRA subsidy on March 1, 2009, would have exhausted the COBRA subsidy on November 30, 2009, and been required to pay 100% of his/her COBRA premium for coverage on and after December 1, 2009.

1. *Retroactive Coverage.* Individuals who reached the end of the original COBRA subsidy period and who then lost COBRA coverage for non-payment can retroactively pay the COBRA premiums (at the subsidized rate) and have their COBRA coverage reinstated. Retroactive payment must be made by February 17, 2010, or, if later, 30 days following notice regarding the ability to make such payments.
2. *Refund or Credit.* Individuals who reached the end of the COBRA subsidy period and who continued COBRA coverage at full cost are eligible to receive a refund or credit of the amount they paid in excess of the subsidy.
3. *Notice.* Any individual who is in the "transition period" must receive information about the DDAA changes to the COBRA subsidy (including information about retroactive payments described above) within 60 days following the beginning of the "transition period." This is an earlier deadline than for the notice requirements discussed above.

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