

AMERICAN PAYROLL ASSOCIATION

Compliance Update

COBRA Premium Subsidy Extended

On December 19, President Obama signed into law the Department of Defense (DOD) Appropriations Act, 2010 (Pub. L. No. 111-118), which includes provisions extending the COBRA premium subsidy that was enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA; see [PAYROLL CURRENTLY, Issue No. 4, Vol. 17](#)).

Under ARRA, individuals are eligible for the 65% COBRA premium subsidy for up to 9 months if they lose group health plan coverage because of an employee's involuntary termination of employment between September 1, 2008, and December 31, 2009, elect COBRA coverage, and pay 35% of the full COBRA monthly premium.

The DOD Appropriations Act makes three important changes:

1. It extends the deadline for the involuntary termination of employment to February 28, 2010;
2. It clarifies that eligibility for the subsidy is based on the date of the qualifying event (i.e., employment termination), not the date the individual becomes eligible for COBRA continuation coverage; and
3. It extends the maximum eligibility period from 9 to 15 months, both for those who became or become eligible by December 31, 2009, and for those who become eligible by February 28, 2010.

The DOD Appropriations Act also includes transitional provisions protecting those individuals whose eligibility for

the premium subsidy expired before the extension (e.g., individuals whose period of eligibility began on March 1 and ended on November 30) and requiring group health plan administrators to notify them of their retroactive eligibility for the subsidy.

Individuals whose eligibility for the premium subsidy expired before December 19 and would be extended by the DOD Appropriations Act changes can maintain their eligibility by paying 35% of the full COBRA premium by February 17, 2010 (60 days after the enactment date of the changes), or, if later, 30 days after being notified of the changes by their group health plan administrator. An individual who pays the full COBRA premium for the period after their original subsidy eligibility expired is entitled to a refund of 65% of the amount they paid.

For any individual who was eligible for the COBRA premium subsidy on or after October 31, 2009, or who loses group health plan coverage because of an employee's involuntary termination of employment on or after that date, the group health plan administrator involved must provide notification to the individual of the DOD Appropriations Act changes by February 17, 2010. If the termination occurs after December 19, 2009, the additional notification language must be included as part of the regular COBRA continuation coverage notification provided to the individual. In addition, for assistance eligible individuals who did not timely pay their COBRA premium once their eligibility for the subsidy expired or who paid the full COBRA premium for such periods, the group health plan administrator must provide such individuals with an additional notification containing information on the DOD Appropriations Act changes, including the right to make retroactive premium payments, within 60 days after the expiration of their original

eligibility period.

For employers, the extensions of COBRA premium subsidy eligibility mean that they will be filing Forms 941 claiming the employment tax credit for the 65% subsidy past IRS's originally expected end-point of the fourth quarter of 2010. Look for more details on the DOD Appropriations Act changes in the next issue of PAYROLL CURRENTLY, which will be e-mailed to you on January 8, 2010.

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