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## CLIENT ALERT

### **Congress Extends and Expands COBRA Health Insurance Premium Subsidy**

On December 21, 2009, President Obama signed into law the Fiscal Year 2010 Defense Appropriations Act, which includes a measure extending and expanding the Consolidated Omnibus Budget Reconciliation Act (“COBRA”) premium subsidy program that was due to expire on December 31, 2009. The new law not only extends the existing subsidy program which was scheduled to expire at year end, but also increases the subsidy period from nine (9) to fifteen (15) months, including for those who are already on COBRA continuation coverage. The law also triggers new compliance and notice requirements that must be met within a short timeframe.

#### **The Original Subsidy Program**

Earlier this year, the American Recovery and Reinvestment Act of 2009 (“ARRA”) established a federal subsidy for eligible individuals to cover 65% of the cost of COBRA continuation coverage premiums for a period of nine (9) months. (See our Client Alert dated February 23, 2009, available at [www.putneylaw.com/cu\\_022309.html](http://www.putneylaw.com/cu_022309.html)). Under the original subsidy program, an “eligible individual” was any COBRA qualified beneficiary who elected COBRA coverage and: (1) had a loss of group health coverage as a result of an involuntary termination of employment (other than gross misconduct); and (2) had a qualifying event between September 1, 2008, and December 31, 2009, was otherwise eligible for COBRA coverage during that period, and elected that coverage. Thus, otherwise eligible employees who lost their jobs after December 31, 2009 or who failed to elect coverage by that date could not receive the subsidy.

#### **Changes in Eligibility and Coverage**

The new law increases the maximum period an eligible individual can receive the subsidy from nine to 15 months. In addition, it extends the eligibility deadline through February 28, 2010. In a departure from the former law, COBRA coverage need not begin

by February 28, 2010. Instead, employees who are involuntarily terminated before February 28, 2010, but whose COBRA coverage starts after February 28, 2010, will qualify for the subsidy.

### **The Transition Period**

For individuals to whom the subsidy now applies as a result of the extension, the new law establishes a “transition period” consisting of any “period of coverage” (*i.e.*, any period during which the premium has been paid) that begins before the extension’s enactment date. During the transition period, an eligible individual will be considered to have timely paid the premium amount so long as he or she: (a) was covered under the COBRA coverage to which such premium relates for the period of coverage immediately preceding the transition period; and (b) pays the amount of the subsidized premium not later than 60 days after the extension’s enactment date (or, if later, 30 days after the new notices are provided, as required, by the employer or health care plan administrator).

The new law makes the COBRA extension retroactive for individuals who lost COBRA coverage because they stopped paying the premiums due to the expiration of their subsidy. Accordingly, the extension applies even to individuals who became eligible for the subsidy after February 2009, and whose initial nine-month coverage has already expired. Similarly, individuals who became eligible for the subsidy in March 2009, and who were eligible for a subsidy only through November 30, 2009 and therefore did not pay their December 2009 premium, can re-enroll in COBRA and receive the subsidy for December 2009 and for another five (5) months through May 2010, without any gaps in coverage. Further, any eligible individual who paid the full premium amount, without regard to the subsidy amount during his or her transition period, may be reimbursed for the excess premiums.

### **Employer Notification Obligations**

The law includes new notification requirements for employers and health plan administrators. First, in the case of an individual who lost the subsidy because he or she reached the nine-month limit and failed to make timely payments of COBRA premiums, the employer must provide, within the first 60 days of the individual’s “transition period,” additional notification with information about the extension, including information on the individual’s ability to make retroactive premium payments in order to maintain COBRA continuation coverage.

In addition, employers and health plan administrators must provide additional notification with information regarding the extension for individuals who were assistance eligible at any time on or after October 31, 2009, or who experience a qualifying event (*i.e.*, termination of employment) relating to COBRA continuation coverage on or after October 31, 2009. This additional notification must be provided within 60 days after the date of the extension’s enactment or, in the case of a qualifying event occurring after October 31, 2009, consistent with the timing of other COBRA subsidy notifications required by ARRA.

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The Departments of Labor, Treasury, and Health and Human Services may issue guidelines concerning the subsidy extension. Of course, if you should have any questions regarding the new law, please contact us.

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