



PROBLEM PREVENTION BULLETIN ~ MARCH 2010

# COBRA Subsidy Extended & Expanded - Again

□ **Effective March 1, 2010:** The federal government continues to extend and expand its subsidy of COBRA benefits for employees who lose their jobs. President Obama signed this most recent extension / expansion into law late in the night of March 2, 2010. The law will be retroactive to cover employees who lost their jobs as of March 1, 2010. WAAG AND CO. reported on the original COBRA subsidy in the April 2009 edition of *The Strategic EMPLOYER* (pages 4 - 5) and issued a special Bulletin (*Problem Prevention Bulletin ~ December 2009 "COBRA Subsidy Extended & Expanded"*) on the first extension / expansion in late December 2009.

□ **Only a One Month Extension:** As with the first extension / expansion, the new law extends the eligibility date for the COBRA premium subsidy, this time for one additional month, meaning that individuals who are involuntarily terminated on or before March 31, 2010 will be eligible. This does not require that the individual be eligible for COBRA by March 31, 2010; the controlling factor is the date of the qualifying event. So an individual who is involuntarily terminated on March 31, 2010, and becomes eligible for COBRA on April 1, 2010, would be eligible for the subsidy if he or she otherwise

meets the requirements of an "assistance eligible individual." Currently, an eligible person can receive the subsidy for up to 15 months.

□ **Coverage Also Expanded:** The new law also provides for a rather convoluted COBRA subsidy for certain individuals who initially lost group health coverage because of a reduction in hours and were subsequently terminated. Since the timing and terminology may be confusing, employers may want to consult their insurance professional.

If a person lost insurance due to a reduction in hours and did not elect COBRA (or discontinued it) and was then terminated on or after March 2, 2010, then the involuntary termination of that person's employment shall be treated as a qualifying event for purpose of giving that person another shot at electing COBRA (with the subsidy).

In such cases, the period of such person's continuation coverage shall be determined as though the reduction of hours were the qualifying event. That means the person not only gets another shot at electing COBRA if and when s/he was involuntarily terminated, s/he can elect continuation back to the date on which coverage was lost

**A**ction Notes:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**R**oute to:

HR Dept: \_\_\_\_\_  
 Accounting Dept: \_\_\_\_\_  
 Benefits Admin: \_\_\_\_\_  
 Managers:

*This bulletin is a general overview of the subject matter, and is not meant to provide professional opinions regarding any specific case, matter, or set of facts, or to substitute for the professional advice of Waag and Co. Instead, please contact Susan S. Waag, Esq. for additional information.*

due to the cut in hours. But if that person does not want to elect to pay for COBRA during the months already passed (for example, the person may not have had any significant health expenses during the time spent working reduced hours), that person may choose to elect COBRA coverage starting with the new qualifying event of involuntary termination.

□ **Additional Notice Required:** As with the prior legislative actions, group health plan administrators must provide an additional notice concerning the subsidy extension. This notice must include information regarding the new expanded subsidy, particularly explaining the new rules for employees who were involuntarily terminated after having previously lost coverage due to a reduction in hours. Although such employees already should have received a COBRA election notice when they lost coverage due to the drop in hours, if such employees are terminated on or after March 2, 2010, then a new notice must be sent.

Employers subject to California's "mini-COBRA" laws will need to monitor developments under applicable state law to see how California reacts to the changes made by this new subsidy expansion.

□ **The Uncertainty is Certain to Continue:** Congress continues to focus on the COBRA subsidy and is currently contemplating proposals to extend the subsidy through the end of 2010. The only reason this has not already occurred is because of debate over various other "add-ons" to the COBRA subsidy, such as further increasing the amount of time a person can receive it and providing the subsidy in a greater number of

circumstances. So, if the March extension / expansion is any indication, we can expect more news very soon — either to extend the current deal for another month, or to reflect a more substantial arrangement regarding what employers can expect for the rest of the year. WAAG AND CO. will continue reporting on developments.

*This bulletin is a general overview of the subject matter, and is not meant to provide professional opinions regarding any specific case, matter, or set of facts, or to substitute for the professional advice of Waag and Co. Instead, please contact Susan S. Waag, Esq. for additional information.*