PUBLICATION

Explaining the COBRA Extension Act

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On March 2, 2010, President Obama signed The Temporary Extension Act of 2010 (COBRA Extension Act), which extends by one month the COBRA premium reduction provisions of the American Recovery and Reinvestment Act of 2009 (Stimulus Act). You may recall that the Stimulus Act provides for certain COBRA premium reductions for qualified individuals, and this COBRA Extension Act introduces a nuance to catch one type of qualifying event:

Individuals who had a reduction of hours between September 1, 2008 and March 31, 2010, followed by an involuntary termination of employment on or after March 2, 2010, shall be treated as incurring a qualifying event on the date of termination of employment.

This is new. Previously, the law only made individuals who became eligible for COBRA continuation coverage because of an involuntary termination of employment potentially eligible for the COBRA premium subsidy. In addition, a qualified individual who was involuntarily terminated during the period from September 1, 2008, through March 31, 2010, and who elects the COBRA continuation coverage, is covered.

The premium reduction applies to periods of health coverage that began on or after February 17, 2009, the date of the original enactment of the Stimulus Act. It also gives eligible individuals up to 15 months of COBRA premium reduction, under which they pay 35% of their COBRA premiums. The remaining 65% is reimbursed to the employer or coverage provider through a tax credit.

A previous extension covered qualifying employment terminations only through February 28, 2010. Now, under the COBRA Extension Act, individuals who incur a qualifying involuntary termination of employment on or before March 31, 2010, will qualify for the COBRA premium reduction. Without the extension, employees laid off after February 28, 2010, would have been ineligible for the subsidy. The law is retroactive; individuals who were involuntarily terminated during March 1-2, 2010, are eligible.

Some aspects of the COBRA Extension Act merit your prompt attention:

- Employers and other health plan sponsors should revise their COBRA notices to reflect the new March 31, 2010 subsidy eligibility expiration date.
- The period of COBRA continuation coverage is determined as though the qualifying event was the reduction of hours.
- Group health plans must notify affected individuals within 60 days following their termination of employment of their right to the COBRA subsidy.
- An employer's determination that a qualifying event was the individual's involuntary termination of employment will be deemed accurate as long as the determination is reasonable and the employer has supporting documentation.
- If the Secretary of Labor or the Secretary of Health and Human Services determines that an individual is eligible for the COBRA subsidy, either the individual or the Secretary may bring a civil action to enforce that determination.
- The Secretary may assess a penalty against the plan sponsor or health insurance issuer of up to $110 per day for each failure to comply with the Secretary's determination.

You may be asking why the extension the President signed only runs through the end of March 2010. One answer may be that the Senate was considering and, on March 10, 2010, passed an amendment to the Tax Extenders Act of 2009, passed by the House of Representatives in December 2009, which extends eligibility through December 31, 2010.

If you need assistance with this or any labor and employment issue, do not hesitate to contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville* and *New Orleans, Louisiana; Jackson, Mississippi;* and *Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee*.

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