

## **DEFENSE APPROPRIATIONS ACT EXTENDS COBRA SUBSIDY RULES INTO 2010**

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The COBRA subsidy provisions under the American Recovery and Reinvestment Act of 2009 ("ARRA") were extended with the enactment of the Fiscal Year 2010 Defense Appropriations Act. President Obama signed this legislation on December 21, 2009. Although this extension was anticipated by many practitioners, the attachment to the Defense Appropriations Act was not the expected vehicle for these provisions.

One of the most immediate effects of the extension is that employees who are involuntarily terminated after December 31, 2009, will continue to be eligible for the subsidy for COBRA premium payments. **Eligibility for the COBRA subsidy is now extended to involuntary terminations through February 28, 2010.**

Another significant provision: **the period during which an eligible individual may pay the subsidy amount of 35% of the COBRA premium is increased to fifteen (15) months, rather than nine (9) months.**

The COBRA provisions in the Defense Appropriations Act also fill in the gaps for certain affected individuals to permit them to take advantage of these changes retroactively. Those provisions **require employers/plan administrators to send a notice to:**

- individuals who were either already "assistance eligible individuals" as of October 31, 2009, or who experience a "qualifying event" that is a termination of employment on or after October 31, 2009, to tell them of the changes in the law.
- individuals who stopped paying the COBRA premium because their subsidy period ended, to tell them about the law changes and to offer them a chance to make retroactive premium payments for those months when, under the prior law, the subsidy period had ended. If an individual makes the retroactive premium payments within 60 days, then COBRA coverage will be deemed to continue uninterrupted.

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As we described in our E-mail Alert on March 6, 2009, ARRA provided that affected individuals need only pay 35% of the cost of the premium; the remaining 65% will be covered by government subsidy. You can access that Alert for further information on the ARRA provisions on our website at:  
[http://www.devinemillimet.com/uploads/docs/Friday\\_Email\\_Alert\\_030609.pdf](http://www.devinemillimet.com/uploads/docs/Friday_Email_Alert_030609.pdf)

Further guidance is expected regarding, for example, a format for the new notices that affected individuals are required to receive. We will send along to you what we learn.

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