

# *Legal Update*

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## **BREAKING NEWS: COBRA Subsidy Extended; Employers Must Take Action**

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**Background:** The American Recovery and Reinvestment Act of 2009 (the “Act”) was passed on February 17, 2009. It substantially affected both employers and employees with regard to COBRA. In a nutshell, the Act provided a 65% subsidy for COBRA (and some state continuation coverage) premiums for employees whose employment was or is involuntarily terminated between September 1, 2008 and December 31, 2009 (“qualifying employees”). The subsidy also applied to a qualifying employee’s eligible dependents. Under the Act, a qualifying employee electing COBRA coverage only had to pay 35% of what the employee’s COBRA premium would have been for up to a nine-month period. Employers, meanwhile, have had to pay the remaining 65% of the premium, but have been able to file a claim with the U.S. Treasury Department to obtain a credit against their payroll taxes for the provided subsidy.

**New Developments:** On December 19, 2009, President Obama signed the Department of Defense Appropriations Act for Fiscal Year 2010 and extended the COBRA subsidy just in time for the New Year. The extension provides an additional six months of the COBRA health insurance premium subsidy, and it also extends the subsidy eligibility period. Under the new law, employees who involuntarily lost their jobs from September 1, 2008 through February 28, 2010 (formerly December 31, 2009) may qualify for the 65% subsidy on COBRA premiums. Instead of receiving only nine months of the subsidy, those eligible may receive up to 15 months of the subsidy.

The extension also assists those terminated employees who have already exhausted the nine months of the “old” subsidy. Such employees will have an opportunity to have their COBRA premium subsidized for up to six more months or receive a refund or credit for paying the full premium amount for up to six months after the “old” subsidy expired. The new extension also assists those employees who terminated their COBRA coverage after receiving the nine month subsidy by granting such individuals the opportunity to return to the COBRA plan at a subsidized rate.

Under the extension, employers must provide notices of the new extension by February 17, 2010 to individuals whose employment was involuntarily terminated on or after October 31, 2009 through the date of enactment (December 19, 2009) as well as to those individuals who received the “old” COBRA subsidy. For individuals who become eligible for the subsidy after the date of enactment, employers must provide notice consistent with COBRA’s general notification rules.

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