



# THOMPSON HINE

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## EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION UPDATE

### COBRA Subsidy Extended

*This bulletin provides a summary of recent changes made by the Department of Defense Appropriations Act relating to the COBRA premium subsidy provisions, originally enacted as part of the American Recovery and Reinvestment Act of 2009.*

*For information on existing COBRA subsidy requirements, see our prior bulletins: **New Federal Laws Affect Group Health Plans** ([www.ThompsonHine.com/publications/publication1712.html](http://www.ThompsonHine.com/publications/publication1712.html)) and **New Guidance on the COBRA Premium Subsidy** ([www.ThompsonHine.com/publications/publication1756.html](http://www.ThompsonHine.com/publications/publication1756.html)).*

On December 19, President Obama signed into law an extension to the COBRA subsidy that immediately impacts group health plans. The recently enacted law extends the COBRA subsidy that was originally created as part of the American Recovery and Reinvestment Act of 2009 (“the Act”). Sponsors and plan administrators of group health plans should be aware of the following key provisions of this new law.

### EXTENDED DURATION OF COBRA SUBSIDY

The new COBRA subsidy law extends the duration of the COBRA subsidy from nine months to 15 months, effective immediately. The extended duration applies to both individuals who become entitled to the subsidy in the future and to individuals who are currently and, in some instances, have previously been eligible for the COBRA subsidy.

Individuals becoming eligible for the subsidy after December 19, 2009 will receive 15 months of subsidized coverage. Individuals currently within their subsidy period will be entitled to an additional six months of subsidized COBRA coverage, after the initial nine months of subsidized coverage ends.

For individuals whose nine months of subsidy coverage has expired, the new COBRA subsidy law requires that they be offered the opportunity to receive an additional six months of subsidized coverage. If an individual terminated COBRA coverage at the end of his nine-month subsidy period, he must be offered the opportunity to reinstate his coverage retroactively to the date the coverage was lost, and receive the additional six months of subsidized COBRA coverage. Payment for the reinstated coverage must be made within 60 days of the new law’s enactment (February 17, 2010) or, if later, within 30 days of the date the plan administrator provides notice to the individual of the extended subsidy availability.



Individuals who continued their COBRA coverage after the end of the nine-month subsidy period at the higher COBRA rates must be offered a reimbursement of the overpayment amount (i.e., the difference between the COBRA rates and the subsidy rates) or a credit toward future COBRA premium payments.

### **EXTENDED ELIGIBILITY FOR THE COBRA SUBSIDY**

The Act extended the subsidy eligibility period by two months, making all assistance-eligible individuals involuntarily terminated on or before February 28, 2010 eligible for the COBRA subsidy.

Prior to the extension, the COBRA subsidy rules conditioned eligibility for the subsidy on both the termination date and the COBRA eligibility date occurring on or before December 31, 2009. This provision of the original COBRA subsidy law resulted in individuals who were terminated in December 2009 but not eligible for COBRA until January 1, 2010 being ineligible for the subsidy. Under the new COBRA subsidy extension, all individuals involuntarily terminated between now and February 28, 2010 are eligible for the COBRA subsidy, even if COBRA coverage is not effective until March 1, 2010 or later.

### **REQUIRED NOTICES**

Notices outlining the new subsidy rules must be provided no later than February 17, 2010 to all individuals who were eligible for the subsidy as of October 31, 2009. A notice explaining re-election and reimbursement rights must also be provided to all individuals who exhausted their nine months of subsidy coverage and either dropped coverage at the end of their nine-month subsidy period or who continued COBRA coverage at the full COBRA rate. The Department of Labor anticipates issuing model notices that can be used to satisfy these requirements.

### **NO IMPACT ON CALCULATION OF THE SUBSIDY OR TAX CREDIT**

The COBRA subsidy extension did not change the amount of the subsidy. Individuals are still required to pay 35 percent of the COBRA premium for the subsidy period, with the employer covering the remaining 65 percent. The employer's payroll tax credit also remains intact.

### **ACTION ITEMS**

Plan administrators should promptly contact their COBRA vendor to ensure that COBRA notices and forms are being updated to comply with these revised requirements. Employers that self-administer COBRA should immediately take steps to conform administration to these new requirements.

### **ADDITIONAL LEGISLATION ON THE HORIZON**

Before adjourning for the holiday break, the House of Representatives passed the Jobs for Main Street Act, which provides for additional modifications to the current COBRA subsidy laws. This



legislation will be considered by the Senate in January. If passed it will provide additional extensions and modifications to the COBRA subsidy law. We will update you on this legislation if it becomes law.

#### **FOR MORE INFORMATION**

If you would like more information about the COBRA subsidy extension, please contact your primary Thompson Hine Employee Benefits & Executive Compensation lawyer or email us at [AskUs@ThompsonHine.com](mailto:AskUs@ThompsonHine.com). For a list of our Employee Benefits & Executive Compensation lawyers, please go to [www.ThompsonHine.com/practices/Employee\\_Benefits\\_Executive\\_Compensation/lawyers/](http://www.ThompsonHine.com/practices/Employee_Benefits_Executive_Compensation/lawyers/).

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