Premium Subsidy Extended, and May Be Extended Again

It came as no surprise, but President Obama this week signed the Department of Defense Appropriations Act for Fiscal Year 2010, H.R. 3326 (DODA), which provides an extension of the COBRA premium subsidy program under the American Recovery and Reinvestment Act ("ARRA").

As you know, ARRA provided a temporary subsidy of 65% of the COBRA premium for employees who are involuntarily terminated and otherwise are eligible for COBRA, known as Assistance Eligible Individuals (AEIs). The ARRA subsidy by its terms was to expire for qualifying events occurring after December 31, 2009.

DODA changes the dates of the premium subsidy and other provisions in the following key ways:

Extension of Premium Subsidy. The term of the premium subsidy is extended from 9 months to 15 months. Eligibility for the subsidy also is extended to individuals involuntarily terminated between January 1, 2010 and February 28, 2010. This eligibility applies even if the COBRA coverage would not be effective until March 1, 2010, resolving a problematic provision in the previous ARRA guidance. The subsidy amount remains at 65 percent.

Effect on COBRA Eligibility Period. As under ARRA, the COBRA eligibility rules still apply. For example, individuals who have exhausted their COBRA eligibility period will not be eligible for the extended subsidy benefit simply because of this new law.

Second (Third?) Chance Election. Some AEIs dropped their COBRA coverage when the subsidy ran out, because they could not afford the full premium. The legislation gives beneficiaries whose 9 month subsidy ran out (and who subsequently dropped COBRA) a second chance to elect coverage and pay the back premium. The payment must be made within the later of 60 days of DODA's enactment or 30 days after notice is provided by the employer.

Since ARRA had a second chance election, is this a third chance election?

Refund of Overpaid Premium. The law also sets forth new rules for refunds, such as when an AEI continued to pay the full premium after expiration of the original subsidy but who is entitled to the extended DODA subsidy. If an AEI is due a reimbursement for overpaid premiums, ARRA's reimbursement rules apply.

> *These rules effectively allow the employer to issue a refund, or apply a credit toward the future premium balance, as long as the credit can be used up within 180 days.*

Notice Requirements. Employers must send notices describing the extension to:

- Anyone who was an AEI on or after October 31, 2009; and
- Anyone who is terminated from employment (voluntarily or involuntary) on or after October 31, 2009.

This notice must be given within 60 days of the law's enactment.

Employers also must send notice to AEIs dropped from coverage for failure to pay premiums. This notice must describe the right to pay back premiums and reinstate coverage between the period of the original subsidy end date and the date of enactment. This notice must be given within the first 60 days of the transition period.

Effective Date. The extension is effective immediately.

Are We Done Yet? Nope, the Jobs for Main Street Act of 2010, H.R. 2847, if passed, will extend the premium subsidy from February 28 to June 30, 2010.

Dated: December 23, 2009