

BenAlert

BENEFIT TRENDS AND LEGISLATIVE UPDATES

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HOWITT
Benefit Services

Howitt Benefit Services is pleased to provide you with periodic updates on benefit trends and legislative updates. As part of our valuable services, we want to ensure that you are in compliance and well-informed of the ongoing changes in our industry.

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- COBRA Temporary Extension to March 31, 2010: COBRA Subsidy Extended, Plus Technical Tweaks

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March 5, 2010

Once again, Congress has extended the benefits of the ARRA COBRA subsidy to COBRA Subsidy Events occurring on or before March 31, 2010. On Tuesday, March 2, 2010, the Senate voted 78-19 to enact H.R. 4691 (<http://www.govtrack.us/congress/bill.xpd?bill=h111-4691>), the Temporary Extension Act of 2010 (TEA), which contains an extension of the COBRA Subsidy Events through March 31, 2010 along with the extension of unemployment benefits through April 5, 2010. The purpose of this Memorandum is to describe the COBRA Subsidy extension and other significant COBRA subsidy changes found in TEA.

Reduction of hours, followed by an involuntary termination of employment

The Act made some additional technical changes. One key change provides that employees who experience a COBRA event as a result of a reduction of hours, followed by an involuntary termination of employment on or after the Act's effective date, can treat the subsequent involuntary termination of employment as a new COBRA event. The new COBRA event entitles them to another COBRA election and the COBRA premium subsidy.

Prior to this change, an employee who lost health benefits because of a reduction in hours had a right to elect COBRA, but not a right to the premium subsidy (unless the reduction in hours effectively constituted an involuntary termination of employment). Employees in this position

may have chosen not to elect COBRA, given the cost of the COBRA premiums, or may have elected COBRA and then dropped coverage (perhaps, again, due to cost).

Now, if an individual in that situation incurs an involuntary termination of employment on or after March 2, 2010, that individual has a new COBRA election right, this time as an “assistance eligible individual,” which makes him or her eligible for the COBRA premium assistance. Even though the individual has another COBRA election, his or her COBRA period continues to be measured from the date of the reduction in hours (not the involuntary termination of employment).

Background

On Saturday, December 19, 2010, Congress extended the original COBRA subsidy benefit enacted under the American Recovery and Reinvestment Act (ARRA) by extending the subsidy qualifying period from December 31, 2009 to February 28, 2010 and increasing the subsidy benefit from nine (9) months to fifteen (15) months. It also liberalized the eligibility to require that only the loss of coverage (due to involuntary terminations) occur by February 28, 2010. And now comes TEA.

Discussion

- 1. TEA Extension.** The TEA legislation retains the fifteen month benefit as well as the requirement that only a loss of coverage (and not the start of COBRA) occur during the qualifying period. An Assistance Eligible Individual now becomes eligible for the 65% subsidy when the loss of coverage (due to involuntary termination) occurs on or before March 31, 2010.
- 2. Involuntary Terminations Expanded.** TEA also expands the availability of the subsidy in the event of a reduction of work hours resulting in a COBRA Qualifying Event any time between September 1, 2008 and March 31, 2010 followed by an involuntary termination of employment after March 2, 2010. A Qualified Beneficiary who did not make (or made and discontinued) a COBRA election based on a reduction of work hours at the time and whose involuntary termination of employment occurs on or after March 2, 2010 (date of enactment), will now become an AEI and able to elect the subsidy.
- 3. New Election Period.** As a result of this expansion, the Plan Sponsor must provide a notice of a new election period describing the COBRA subsidy rights granted under TEA to the individuals who underwent a reduction of work hours any time after September 1, 2008 followed by an involuntary termination in March 2010. For purposes of this provision, the 18 months of COBRA begins with the date the individual lost coverage as a result of the reduction of work hours. It is possible that the AEI will exhaust all COBRA benefits prior to receiving the full fifteen months of subsidy. It is important to note that exhaustion of COBRA terminates all federal subsidy rights (even though state laws, such as we have in California (AB 1401 <http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_1401-1450/ab_1401_bill_20020922_chaptered.html>), provide additional continuation coverage.).
- 4. Previous Guidance.** In previous guidance, the Department of Labor treated a termination of employment following a reduction in work hours as involuntary if the reduction is

so severe that the employee must quit to find a new job.

5. Further Guidance. The Department of Labor will provide additional guidance in the form of FAQs shortly, and, we presume, a new model notice for compliance with the class of AEs whose reduction of work hours occurred anytime after September 1, 2008 and was followed by an involuntary termination in March 2010.

Action Plan

1. Plan Sponsors must identify all individuals who underwent a reduction of work hours such that they became eligible for COBRA (whether declined to elect, or elected and discontinued) and who then are terminated from employment on or after March 2, 2010.
2. Provide the new notice describing the COBRA subsidy expansion to these individuals within 60 days of their termination of employment. It is important to note that this new notice must go as well to people already on COBRA or once on COBRA due to the reduction of work hours who undergo an involuntary termination of employment in March.
3. Prepare for more guidance.

More About COBRA Extensions

TEA is an interim measure to provide continuity of COBRA subsidy benefits. It is our understanding that the U.S. Senate also is considering House passed legislation (H.R. 4213) which would expand COBRA subsidy eligibility for involuntary terminations occurring on or before December 31, 2010. If the Senate adopts H.R. 4213, it will be sent to the President for signature and enactment. The Senate most likely will act within a few days.

For a copy of the law: <http://www.govtrack.us/congress/bill.xpd?bill=h111-4691>. We will keep you informed of developments.

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