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ATTORNEYS AT LAW

EMPLOYMENT LAW ALERT (January, 2010)

The COBRA subsidy for involuntarily terminated employees that was set to expire on December 31, 2009 will now expire on February 28, 2010. The COBRA subsidy provides involuntarily terminated "assistance eligible individuals" (AEIs) with a 65 percent subsidy for COBRA continuation coverage for up to 9 months. The new legislation extends the period during which an AEI can receive a COBRA subsidy from 9 months to up to 15 months so long as the involuntary termination of employment occurs by February 28th. The extension provides as follows:

1. AEIs Currently Receiving the Subsidy. All eligible individuals currently receiving the subsidy can continue to pay the reduced 35 percent COBRA premium for an additional six months. The COBRA subsidy eligibility now ends on the earlier of 15 months after the date of the eligible individual's original subsidy eligibility, the individual's eligibility for coverage under another group health plan, or the termination of the individual's COBRA coverage.

2. AEIs Whose COBRA Coverage Had Terminated After The 9-Month Subsidy Period Was Exhausted. Individuals whose COBRA coverage terminated on or after they had exhausted their COBRA subsidy period are allowed an extended period of time, until the later of 60 days after enactment (February 17, 2010) or 30 days after required employer notices are distributed, to pay the past due premiums at the lower subsidized rate and retroactively reinstate their COBRA coverage. Eligible individuals who dropped their coverage before the maximum subsidy period are not eligible for this retroactive election.

3. AEIs Whose 9-Month Subsidy Period Was Exhausted and Continued COBRA Coverage Paying Full COBRA Rates. Eligible individuals who paid full COBRA premiums for coverage after the 9-month subsidy period ended must be reimbursed for their overpaid COBRA premiums. The employer will have the option to either issue a refund or apply the credit to future premium payments, if it is reasonable to believe that the credit can be used within 180 days after the overpayment was made.

This new legislation requires the distribution of notices regarding the subsidy extension and the right to retroactively reinstate COBRA coverage. The Department of Labor is expected to release new model notices and additional guidance within the next 30 days, just as it did with the original subsidy.