



The GSH 60-Second Memo

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Congress Extends Eligibility for COBRA Subsidy

By Matthew J. Feery, Esq.

Employers should be aware that on March 2, 2010, Congress passed the Temporary Extension Act of 2010 (the "Act"), which expands the qualification period and eligibility pool for the COBRA subsidy from the American Recovery and Reinvestment Act of 2009. These changes, along with several others from the Act, are outlined below, and employers should take immediate action to ensure their COBRA notices are up to date.

First, the Act extends the qualification period for the COBRA subsidy from February 28, 2010 to March 31, 2010. All COBRA notices to employees should be amended to reflect the new subsidy eligibility cutoff date.

Second, the Act extends eligibility for the COBRA subsidy to a new class of employees. Previously, employees eligible for COBRA coverage based on a reduction in hours did not qualify for the COBRA subsidy. Under the Act, those same employees *may* qualify for the COBRA subsidy if, subsequent to their reduction in hours, they are involuntarily terminated by their employer. However, employees in this new category will qualify for the COBRA subsidy *only* if the involuntary termination occurs *after* the enactment of the Act (March 2, 2010). Employers should note that because the Act only extends the qualification period for the subsidy to March 31, 2010, this new Act, as written, will not apply to employees with a reduction in hours and subsequent involuntary termination if that involuntary termination occurs before March 2, 2010 or after March 31, 2010. However, if history is any indication, Congress likely will extend this period at some point in the future.

To help this new class of employees receive the COBRA subsidy, the Act provides certain employees involuntarily

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terminated between March 2, 2010 and March 31, 2010 with a second chance to elect COBRA coverage. This "second chance" will be given to those employees who previously qualified for COBRA coverage because of a reduction in hours but either chose not to elect COBRA coverage at the time or elected COBRA coverage at the time but then discontinued it. COBRA coverage will *not* be made retroactive to the date of the reduction of hours, but the date of the reduction in hours *will* count as the "qualifying event" for calculating the duration of COBRA coverage.

Finally, the Act makes several small changes of which employers should take note: employers now have a "safe harbor" for their determination of what constitutes an "involuntary" termination; the Act makes a slight change to the calculation of the duration of the COBRA subsidy under certain healthcare plans; and the Act also clarifies and adds enforcement provisions relating to the COBRA subsidy.

On March 19, 2010, the Department of Labor released updated model notification letters, which can be found at <http://www.dol.gov/ebsa/COBRAmodeInotice.html>. Employers are required to send notices to employees who may qualify under the new rule within 60 days of their involuntary termination of employment. Moreover, with the continuing high unemployment rate, employers should not expect that this will be the last change to the COBRA subsidy. Gonzalez Saggio & Harlan will keep you apprised of any further changes to COBRA or the COBRA subsidy and stands by ready to assist any employers with questions on the new law.

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