

ADLER POLLOCK & SHEEHAN P.C.

www.apslaw.com**Employer Alert: Federal COBRA Subsidy Extended**

The COBRA premium subsidy established in early 2009 by the American Recovery and Reinvestment Act of 2009 (ARRA) **has been extended from 9 months to 15 months for employees involuntarily terminated from Sept. 1, 2008, through Dec. 31, 2009.** In addition, employees who lose their jobs **through February 28, 2010**, are also eligible for the 15-month subsidy.

Under the new law, employers must provide an additional notice concerning the subsidy extension. The notice is required for individuals who, on or after October 31, 2009, either:

- became “assistance eligible individuals” or
- experienced a qualifying event (*i.e.*, termination of employment) related to COBRA continuation coverage.

The new notice must be sent by **February 17, 2010**, unless the qualifying event occurred after December 19, 2009. In that case, the notice, which must include information regarding the extension, must be sent pursuant to the general timing rules under existing COBRA regulations (generally 44 days from the date of the qualifying event).

The new law also addresses a contradiction in the original subsidy enactment by shifting the trigger from the date of COBRA eligibility to the actual date of termination. For example, an individual who is involuntarily terminated on February 28, 2010 (the last date of eligibility for the subsidy) and becomes eligible for COBRA on March 1, 2010, would be eligible for the subsidy if he or she otherwise meets the requirements of an “assistance eligible individual.”

Employers are required to send a separate notice to those individuals whose eligibility for the subsidy expired in December and who consequently dropped coverage and ceased to pay their share of the COBRA premiums or paid the premium in full in December to continue the coverage. These individuals will be able to reinstate their coverage retroactively by paying the reduced premium, or, in the case of those who paid the full premium, by receiving a credit or refund of the premium paid.

Those who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction. Employees terminated for "gross misconduct" are also not eligible for the subsidy.

Employers subject to state "mini-COBRA" laws, such as Rhode Island employers, will need to monitor developments under applicable state law to see how the state reacts to the changes made by the new law.

For more information, including details regarding the new notice requirements and any form notices issued by the Employee Benefits Security Administration and the Internal Revenue Service on employers' obligations under the new COBRA provisions, please contact the AP&S Labor and Employment Group at (401) 274-7200, or by responding to labor@apslaw.com.