

ALBANY  
AMSTERDAM  
ATLANTA  
AUSTIN  
BOSTON  
CHICAGO  
DALLAS  
DELAWARE  
DENVER  
FORT LAUDERDALE  
HOUSTON  
LAS VEGAS  
LONDON\*  
LOS ANGELES  
MIAMI  
NEW JERSEY  
NEW YORK  
ORANGE COUNTY  
ORLANDO  
PALM BEACH COUNTY  
PHILADELPHIA  
PHOENIX  
SACRAMENTO  
SHANGHAI  
SILICON VALLEY  
TALLAHASSEE  
TAMPA  
TYSONS CORNER  
WASHINGTON, D.C.  
WHITE PLAINS

*Strategic Alliances with  
Independent Law Firms\*\**

MILAN  
ROME  
TOKYO  
ZURICH

## Government Subsidy of COBRA Premiums Receives a Lifeline

On December 19, President Obama signed the Department of Defense Appropriations Act, 2010 (the DOD Act). The DOD Act extends and expands the government-funded subsidy program for COBRA continuation premiums that was created under the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA provided a 65-percent COBRA premium subsidy for workers (and their eligible family members) who became eligible for COBRA continuation coverage as a result of an involuntary termination of employment. The ARRA COBRA subsidy applied to individuals whose employment terminated, and COBRA eligibility commenced, between September 1, 2008 and December 31, 2009, and the subsidy was available for up to nine months.

The DOD Act amends the relevant sections of ARRA (1) to extend the maximum length of the COBRA premium subsidy to 15 months and (2) to expand the availability of the COBRA premium subsidy to workers who suffer an involuntary termination of employment on or before February 28, 2010. Also, because there are individuals who remain eligible for the COBRA subsidy under the extension but whose subsidy under the original ARRA provisions had expired, the DOD Act creates new reporting obligations and transition period rules. **Administrative processes and notifications will need to be modified immediately in order to comply with these recent law changes.**

### COBRA Subsidy Extended by Six-Months

Under the provisions of ARRA, an "assistance eligible individual" (defined below) was entitled to a 65-percent COBRA premium subsidy for a maximum period of nine months. Under the DOD Act, the maximum COBRA premium subsidy period now runs for 15 months from the first day of the first month that the COBRA premium subsidy applies to the assistance eligible individual. Nothing in the DOD Act, however, changes the COBRA continuation period itself for qualified beneficiaries who lose health care coverage as a result of a termination of employment; that period continues to be 18 months.

### Extended and Modified Eligibility Period for COBRA Subsidy

The DOD Act extends to February 28, 2010 the period during which a qualified beneficiary may incur an involuntary termination of employment and become eligible to receive the COBRA premium subsidy. Notably, the DOD Act specifically modifies the definition of an "assistance eligible individual" to base eligibility for the subsidy on when the involuntary termination occurs, not when the COBRA continuation period resulting from the involuntary termination starts. Under ARRA, an individual who was terminated before December 31, 2009, but who did not

become eligible for COBRA until January 1, 2010, was not eligible for the subsidy. Under the DOD Act, however, a person who has an involuntary termination in February 2010, but doesn't become eligible for COBRA coverage until March 1, 2010, is eligible for the subsidy.

Thus, an "assistance eligible individual," for purposes of the subsidy, is any qualified beneficiary who:

- becomes eligible for COBRA continuation coverage as a result of an involuntary termination of employment occurring on or after September 1, 2008 and on or before February 28, 2010; and
- elects to receive the COBRA continuation coverage.

The DOD Act change to specify that eligibility for the COBRA subsidy is determined by the timing of the qualifying event, rather than the timing of the qualified beneficiary's eligibility for COBRA continuation coverage, is significant. In addition to fixing an obvious flaw in the original statutory language, it may also have the effect of delaying the commencement of the COBRA premium subsidy period to the extent that the qualified beneficiary first becomes eligible for COBRA continuation coverage at some point after his or her involuntary termination — for example, if an employer has an arrangement, such as a separation package, under which the employer effectively keeps a terminated employee on active coverage during a severance or similar period and starts COBRA coverage once the severance ends.

#### Transition Period Rules — More Retroactive Requirements

The DOD Act contains transition period rules for assistance eligible individuals who may have exhausted the nine-month COBRA premium subsidy period before December 17, 2009. Under the DOD Act, assistance eligible individuals may elect to make premium payments that have retroactive effect so as to remain eligible for COBRA continuation coverage on a subsidized basis.

**Individuals Covered Under COBRA.** To the extent that an assistance eligible individual continued to remain covered under the COBRA continuation coverage by making the unsubsidized premium payments on a timely basis, that individual will be entitled to a refund equal to 65 percent of the premium payment.

**Individuals Whose COBRA Coverage Lapsed.** If COBRA coverage lapsed because the assistance eligible individual stopped paying premiums when the subsidy originally expired, the assistance eligible individual will be allowed to restart his or her COBRA coverage retroactive to the time at which it lapsed. A premium payment for the retroactive coverage will be deemed to have been timely made if:

- the assistance eligible individual was covered under the COBRA continuation coverage to which such premium payment relates for the period of coverage immediately preceding the "transition period" (defined below); and
- the individual pays 35 percent of the COBRA continuation premium no later than February 17, 2010 (or if later, 30 days after the individual is notified of these DOD Act changes).

For purposes of these transition period rules, the "transition period" means any period of coverage if:

- the period of coverage begins before December 19, 2009; and
- the COBRA premium subsidy period applies to this period as a result of the six-month extension of the COBRA premium subsidy period.

## Notification Requirements

The DOD Act adds new notifications (in addition to the existing notification requirements under ARRA) that must be provided to assistance eligible individuals or qualified beneficiaries in three circumstances.

- First, an employer must provide a notice that details the amendments to ARRA made by the DOD Act to individuals who became assistance eligible individuals, or experienced a qualifying event consisting of a termination of coverage, on or after October 31, 2009. This notice must be provided by February 17, 2010 or, in the case of a qualifying event occurring after December 19, 2009, at times consistent with the timing of notifications previously established under COBRA and ARRA.
- Second, an employer must provide a notice to individuals whose COBRA continuation coverage lapsed as a result of failing to pay the COBRA continuation premiums during the transition period. These individuals must receive notice from the employer describing the DOD Act amendments to ARRA, including information on the assistance eligible individual's ability to make retroactive premium payments with respect to the transition period of the individual in order to maintain COBRA continuation coverage.
- Third, an employer must provide a notice to individuals who paid the unsubsidized COBRA continuation premiums for coverage during the transition period.

---

This *GT Alert* was prepared by Michael Einig, Ian Herbert, Renee O'Rourke and Magan Ray. For assistance in satisfying these new notification and administration obligations before the applicable deadlines, or for more information regarding the government-funded subsidy for the COBRA continuation premiums discussed above, please contact:

- [Michael Einig](mailto:einigm@gtlaw.com) – 305.579.0639 ([einigm@gtlaw.com](mailto:einigm@gtlaw.com))
- [Ian Herbert](mailto:herberti@gtlaw.com) – 703.749.1302 ([herberti@gtlaw.com](mailto:herberti@gtlaw.com))
- [Renee O'Rourke](mailto:orourker@gtlaw.com) – 303.572.6544 ([orourker@gtlaw.com](mailto:orourker@gtlaw.com))
- [Magan Ray](mailto:raym@gtlaw.com) – 650.289.7874 ([raym@gtlaw.com](mailto:raym@gtlaw.com))
- Any of the [Global Benefits & Compensation](#) attorneys listed on the following page
- Or your [Greenberg Traurig](#) attorney

**Albany**  
518.689.1400

**Amsterdam**  
+ 31 20 301 7300  
*Patrick Rietbroek*  
*Eugene Weultjes*

**Atlanta**  
678.553.2100  
*Allen D. Altman*  
*Cynthia A. Groszkiewicz*  
*Todd D. Wozniak*

**Austin**  
512.320.7200

**Boston**  
617.310.6000

**Chicago**  
312.456.8400  
*Michelle C. Kauppila*  
*Leslie A. Klein*  
*Richard A. Sirus*

**Dallas**  
214.665.3600  
*Daniel P. Novakov*

**Delaware**  
302.661.7000

**Denver**  
303.572.6500  
*Renee W. O'Rourke*

**Fort Lauderdale**  
954.765.0500

**Houston**  
713.374.3500

**Las Vegas**  
702.792.3773

**London\***  
+44 (0)203 349 8700

**Los Angeles**  
310.586.7700

**Miami**  
305.579.0500  
*Michael Einig*  
*Steven B. Lapidus*  
*Mindy B. Leathe*

**New Jersey**  
973.360.7900  
*Frederick M. Lappin*

**New York**  
212.801.9200  
*Jack Helitzer*  
*Jonathan L. Israel*  
*Barbara T. Kaplan*  
*Jeffrey D. Mamorsky*  
*Steve Mastbaum*  
*Terry Moore*  
*Abby Natelson*  
*Candace Quinn*  
*Ira D. Reifer*  
*Jonathan L. Sulds*

**Orange County**  
949.732.6500

**Orlando**  
407.420.1000

**Palm Beach County North**  
561.650.7900

**Palm Beach County South**  
561.955.7600  
*Brandon Feingold*  
*Jeffrey S. Kahn*

**Philadelphia**  
215.988.7800  
*Robert M. Goldich*

**Phoenix**  
602.445.8000

**Sacramento**  
916.442.1111  
*Carol Livingston*  
*James Nelson*

**Shanghai**  
+86 21 6391 6633

**Silicon Valley**  
650.328.8500  
*James Huynh*  
*Ann LaWer*  
*Saswati Paul*  
*Maganendra P. Ray*

**Tallahassee**  
850.222.6891

**Tampa**  
813.318.5700

**Tysons Corner**  
703.749.1300  
*Jonathan M. Forster*  
*Ian Herbert*  
*Rebecca Manicone*  
*Todd I. Steinberg*

**Washington, D.C.**  
202.331.3100

**White Plains**  
914.286.2900

*Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.*

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ©2010 Greenberg Traurig, LLP. All rights reserved. \*Operates as Greenberg Traurig Maher LLP. \*\*Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the Strategic Alliance firms.*