

## Temporary Extension Act of 2010 (Extension Act) Fact Sheet

Congress has passed, and the President has signed, the Temporary Extension Act of 2010 (Extension Act) which again extends and makes other changes to the COBRA premium subsidy program created by the American Recovery and Reinvestment Act of 2009 (ARRA).

==> **Extension of Eligibility Period for Involuntary Terminations.** As extended by the 2010 DoD Act, ARRA provided a COBRA premium subsidy for certain employees (and their families) involuntarily terminated between September 1, 2008 and February 28, 2010. *The Extension Act extends this eligibility period for an additional month--through March 31, 2010.*

==> **Addition of Qualifying Events That Are Reductions of Hours.** Previously, only those whose qualifying event was an involuntary termination of employment could qualify for the subsidy.

- The Extension Act amends the definition of "assistance eligible individuals" to add qualifying events that are *reductions of hours* occurring within the eligibility period (currently September 1, 2008 to March 31, 2010) but only if followed by an involuntary termination also within the eligibility period but occurring on or after March 2, 2010 (the enactment date of the Extension Act).
- This amendment is needed because, under the normal rules, a termination of employment would not be considered a COBRA qualifying event if it followed a reduction of hours that was itself a qualifying event.

==> **New Election Period for Reductions of Hours Followed by Termination of Employment.** *The Extension Act also requires a new election period in connection with the reduction of hours rule above.*

- Under this requirement, if an eligible individual had a reduction of hours on or after September 1, 2008, but did not elect COBRA (or elected and then discontinued COBRA) and then has an involuntary termination of employment on or after March 2, 2010, the involuntary termination will be considered a qualifying event for which the individual can elect COBRA and be eligible for the premium subsidy.
- The plan administrator must provide the ARRA general notice, including information about this new election period, to affected individuals within 60 days of the individual's involuntary termination.
- The COBRA coverage period is measured from the date of the reduction of hours, but premiums do not have to be paid for COBRA coverage between the reduction of hours and the involuntary termination. The period between the reduction of hours and the involuntary termination of employment reduces the number of months of COBRA available to the affected individual, so that there may be fewer than 15 months of subsidy left following the termination of employment.

==> **Protection for Employers Making Involuntary Termination Determinations.** The Extension Act amends Code Section 6432 (addressing reimbursement by the IRS of premium assistance paid by employers) *to provide for a deemed involuntary termination for purposes of the premium reimbursement* if an employer makes a reasonable interpretation that an employee was involuntarily terminated. To rely on this rule, the employer must maintain supporting documentation, including a written attestation of the involuntary termination. [EBIA Comment: This is a helpful rule for employers to rely on in potentially close cases; it formalizes the position

already taken by the IRS on its website in COBRA Questions and Answers, Q&A AE-25, available at <http://www.irs.gov/newsroom/article/0,,id=205364,00.html>.

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