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***Contractor Alert: COBRA Subsidy
Extended and Expanded***

By: Jill Tobia Sorger, Esq.

Introduction:

Almost a year ago, this column reported on the sections of The American Recovery and Reinvestment Act of 2009 (ARRA) (more commonly known as President Obama's Economic Stimulus package) which provided eligible employees with a nine (9) month subsidy of COBRA premiums. As most employers are now well aware, the COBRA Subsidy originally applied to any employee who lost health care coverage due to a layoff or other involuntary termination (with the exception of termination for gross misconduct) between September 1, 2008 and December 31, 2009. Since being signed into law, employers maintaining group health coverage and/or their plan administrators have struggled with such compliance issues as satisfaction of notice provisions, eligibility determinations and proper subsidy duration. However, with the original December 31, 2009 expiration date for subsidy eligibility, the expectation was that the employer's compliance concerns were largely over.

Not so, according to certain provisions of the Department of Defense Appropriations Act (DOD Act) signed into law by President Obama last month, which has now extended the COBRA Subsidy eligibility period expiration date from December 31, 2009 until February 28, 2010. With this extension, as well as other revisions to the original law made by the DOD Act, employers must once again get up to speed on what is expected with respect to implementation of this COBRA Subsidy extension and other modifications.

The COBRA Subsidy Amount Remains Unchanged:

While the changes to the COBRA Subsidy are discussed below, there are certain provisions that remain unchanged. Most importantly, under the new law, the COBRA Subsidy amount is still equal to sixty five percent (65%) of the COBRA premium charged to an eligible individual. Accordingly, an eligible employee still becomes entitled to a sixty five percent (65%) subsidy after the employee pays thirty five percent (35%) of the COBRA premium. Also, employers will still obtain reimbursement for their portion of the subsidy through a credit on their payroll tax returns.

Expanded Eligibility and Subsidy Period Time Frames:

While the subsidy amount remains unchanged, there are certain other significant changes that extend and expand the subsidy's application. Under the new provisions, employees are now eligible for the COBRA subsidy if they lost health care coverage due to a layoff or other involuntary termination (with the exception of termination for gross misconduct) between September 1, 2008 and February 28, 2010 (as opposed to December 31, 2009). In addition to extending the eligibility

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March 5, 2010

period for the COBRA premium reduction for the additional two (2) months, the new law also extends the maximum period for receiving the COBRA subsidy to fifteen (15) months. Originally, eligible individuals, including family members of laid off or terminated employees, only qualified for the subsidy for a nine (9) month period.

New Notification Requirements:

The new law imposes notice requirements for past, current and future COBRA beneficiaries. While there are certain circumstances which may enlarge or shorten the same, in general, notice of the COBRA Subsidy extension must be provided to most eligible individuals already receiving the subsidy by February 17, 2010. Notice must also be provided all subsidy eligible individuals who previously reached the end of the original nine (9) month maximum premium period before the new legislation extended the maximum period to fifteen (15) months. If these individuals continued COBRA at the unsubsidized rate after the nine (9) month maximum, then they will be entitled to either a refund or credit for the overpayment. For individuals who did not elect to continue COBRA at the full rate after the nine (9) month subsidy period, these individuals must now be afforded an opportunity, along with additional time, to again elect coverage and pay the reduced premiums for the extended period. Accordingly, these subsidy eligible individuals must be given the opportunity to make retroactive payments to continue their coverage by paying the thirty five percent (35%) of

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the premium costs by either February 17, 2010 or thirty (30) days after notice of the COBRA subsidy extension is provided to them, whichever date is later.

Advice for Employers:

Like the original law, the COBRA Subsidy extension program has many details and specifics. In recognition of this practicality, federal agencies such as the United States Department of Labor (USDOL), the Department of Health and Human Services and the Internal Revenue Service (IRS) have all been charged with developing model instructions and notices for employers to utilize in fulfilling their COBRA subsidy responsibilities. In particular, the USDOL and IRS both have updated form notices and other information available to assist employers in complying with the newly enacted extension to the COBRA subsidy program. Particularly helpful is the USDOL's COBRA website, located at www.dol.gov/cobra. This website has been specifically designed to provide updated information and guidance on the subsidy's new notice requirements and other recent facts and frequently asked questions. Even employers who have outside plan administrators should nevertheless stay apprised of the developments surrounding the COBRA subsidy since the same affects a large number of laid off or terminated employees who are likely to turn to employers for advice and guidance on these issues.

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