



will now become an AEI and able to elect the subsidy.

COBRA Temporary Extension to March 31, 2010: There's More to TEA than You Think

Once again, Congress has extended the benefits of the ARRA COBRA subsidy to COBRA Subsidy Events occurring on or before March 31, 2010. On Tuesday, March 2, 2010, the Senate voted 78-19 to enact [H.R. 4691](#), the Temporary Extension Act of 2010 (TEA), which contains an extension of the COBRA Subsidy Events through March 31, 2010 along with the extension of unemployment benefits through April 5, 2010. The purpose of this Memorandum is to describe the COBRA Subsidy extension and other significant COBRA subsidy changes found in TEA.

Background

On Saturday, December 19, 2010, Congress extended the original COBRA subsidy benefit enacted under the American Recovery and Reinvestment Act (ARRA) by extending the subsidy qualifying period from December 31, 2009 to February 28, 2010 and increasing the subsidy benefit from nine (9) months to fifteen (15) months. It also liberalized the eligibility to require that only the loss of coverage (due to involuntary terminations) occur by February 28, 2010. And now comes TEA.

Discussion

- 1. TEA Extension.** The TEA legislation retains the fifteen month benefit as well as the requirement that only a loss of coverage (and not the start of COBRA) occur during the qualifying period. An Assistance Eligible Individual now becomes eligible for the 65% subsidy when the loss of coverage (due to involuntary termination) occurs on or before March 31, 2010.
- 2. Involuntary Terminations Expanded.** TEA also expands the availability of the subsidy in the event of a reduction of work hours resulting in a COBRA Qualifying Event any time between September 1, 2008 and March 31, 2010 followed by an involuntary termination of employment after March 2, 2010. A Qualified Beneficiary who did not make (or made and discontinued) a COBRA election based on a reduction of work hours at the time and whose involuntary termination of employment occurs on or after March 2, 2010 (date of enactment),

- 3. New Election Period.** As a result of this expansion, the

Plan Sponsor must provide a notice of a new election period describing the COBRA subsidy rights granted under TEA to the individuals who underwent a reduction of work hours any time after September 1, 2008 followed by an involuntary termination in March 2010. For purposes of this provision, the 18 months of COBRA begins with the date the individual lost coverage as a result of the reduction of work hours. It is possible that the AEI will exhaust all COBRA benefits prior to receiving the full fifteen months of subsidy. It is important to note that exhaustion of COBRA terminates all federal subsidy rights (even though state laws, such as in California ([AB 1401](#)), provide additional continuation coverage.)

- 4. Previous Guidance.** In previous guidance, the Department of Labor treated a termination of employment following a reduction in work hours as involuntary if the reduction is so severe that the employee must quit to find a new job.
- 5. Further Guidance.** The Department of Labor will provide additional guidance in the form of FAQs shortly, and, we presume, a new model notice for compliance with the class of AEIs whose reduction of work hours occurred anytime after September 1, 2008 and was followed by an involuntary termination in March 2010.

Action Plan

1. Plan Sponsors must identify all individuals who underwent a reduction of work hours such that they became eligible for COBRA (whether declined to elect, or elected and discontinued) and who then are terminated from employment on or after March 2, 2010.
2. Provide the new notice describing the COBRA subsidy expansion to these individuals within 60 days of their termination of employment. It is important to note that this new notice must go as well to people already on COBRA or once on COBRA due to the reduction of work hours who undergo an involuntary termination of employment in March.
3. Prepare for more guidance.

More about COBRA Extensions

TEA is an interim measure to provide continuity of COBRA subsidy benefits. It is our understanding that the U.S. Senate also is considering House passed legislation (H.R. 4213) which would expand COBRA subsidy eligibility for involuntary terminations occurring on or before December 31, 2010. If the Senate adopts H.R. 4213, it will be sent to the President for signature and enactment. The Senate most likely will act within a few days. For a copy of the law:

<http://www.govtrack.us/congress/bill.xpd?bill=h111-4691>

Recent and Upcoming Effective Dates from SHRM

SHRM has issued a reminder of select effective dates. These may be applicable to your business.

1. Excise Tax Reporting on Certain Health Plan Violations -- IRS form 8928 and Instructions
2. Mandatory on-line 5500 Filing -- Efast
3. Red Flags Rule Applies to Flexible Spending Accounts with Debit Cards -- 6-10 -- the FTC Red Flag FAQ
4. Mental Health Parity Regulations -- 4-5-10 -- Link to NCSL
5. CHIP Reauthorization Act of 2009 (CHIPRA) -- 4-4-10

For the text of these requirement see

<http://www.myohr.com/index.php?page=constantcontactlinks>

Federal and State Posters

The Fair Labor Standards Act (FLSA) regulations require employers to physically display posters “in [conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy](#)” (29 CFR 516.4.)

Required posters must be displayed “[so they are easily visible to the intended audience](#),” (existing and new employees) according to the **U.S. Department of Labor** instructions found in [Workplace Poster Requirements for Small Businesses and Other Employers](#).

Executive Order No. 11246, which governs affirmative action by federal contractors, indicates that required posters must be displayed in “[conspicuous places accessible to all employees, job applicants and union representatives](#)” (41 C.F.R 60-1.42).

The Family and Medical Leave Act (FMLA)

requires employers with 50 or more employees to post a notice “[prominently where it can be readily seen by employees and applicants for employment](#)” (29 CFR 825.300). Furthermore, FMLA states that “where an employer’s workforce is comprised of a significant portion of workers who are not literate in English, the employer shall be responsible for providing the notice in a language in which the employees are literate.” The FMLA does not clarify what constitutes a significant portion, so you may wish to err on the side of increased communication.

As you are aware, there are several companies who will sell you their laminated “all-in-one” poster and then send you notices periodically informing you that you are out of compliance and need to purchase another poster. A free alternative is the website below sponsored by the U.S. Department of Labor. The site will walk you through a series of questions to determine your State, industry, # of employees, etc. and then make available to you the required Federal and State flyers in a PDF format that you can send to the printer and post on your bulletin boards.

<http://www.dol.gov/elaws/firststep/q2.htm?fs=C0000000000000000000000000000000>

These articles should not be construed as legal advice or as pertaining to specific situations. Consult with your legal counsel for further information.

Stay “In The Know” in 2010 –

Educational Seminars

We have a variety of educational seminars planned for 2010. Most will be held at the office of our partner in Campbell:

Leavitt Pacific Insurance Brokers
695 Campbell Technology Parkway, Ste 250
Campbell, CA 95008

March Educational Session

In March, OHR welcomes Joannie Chang and Greg Asay of the San Francisco Office of Labor Standards Enforcement. The OLSE enforces labor

laws adopted by San Francisco voters and the San Francisco Board of Supervisors. OLSE ensures public works contractors comply with prevailing wage regulations, enforces the Minimum Compensation Ordinance and Health Care Accountability Ordinance, and administers the City's Sweatfree Contracting Ordinance. OLSE also enforces labor laws of general application, including the San Francisco Minimum Wage Ordinance, Paid Sick Leave Ordinance, and Health Care Security Ordinance.

Joannie Chang will fill us in on the San Francisco Paid Sick Leave Plan and who is subject to this requirement. Greg Asay will address the San Francisco Health Care Security Ordinance.

This session is being held at the office of Leavitt Pacific Insurance Brokers in Campbell Ca. Attendees may participate live or via "Go To" meeting web conferencing application.

OHR's quarterly Harassment Prevention Training for Managers

As a service to your business we have a quarterly Harassment Prevention Training. Those sessions occur each quarter on the last Thursday of the month at 1:00 PM. Mark your calendars for March, June, September and December. We also do individual sessions for your offices, including Managers and Supervisors and non supervisory employees.

The next OHR Harassment Prevention Training for Managers session is scheduled for March **25th at 1:00 pm** in Campbell, CA. To register please RSVP to [Harassment Prevention Training](#)

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