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Employee Benefits Practice Group:

Ira H. Goldman
(860) 251-5820
igoldman@goodwin.com

Richard I. Cohen
(860) 251-5803
rcohen@goodwin.com

Natalie W. Welsh
(860) 251-5828
nwelsh@goodwin.com

Ali Haffner
(860) 251-5091
ahaffner@goodwin.com

Kelly Smith Hathorn
(860) 251-5868
khathorn@goodwin.com

Kimberly S. Cohen
(860) 251-5804
kcohen@goodwin.com

New Law Extends and Expands COBRA Premium Assistance Program

As expected, Congress acted before the end of 2009 and President Obama signed into law on December 21st an extension and expansion of the COBRA Premium Assistance program, the temporary federal program that began last February that allows eligible COBRA beneficiaries to pay only 35% of their otherwise applicable COBRA premiums. The new law continues COBRA Premium Assistance for millions of Americans whose assistance had, or would soon have, ended after 9 months of COBRA coverage. (For more information about the originally enacted COBRA Premium Assistance, visit www.shipmangoodwin.com/publications/Detail.aspx?pub=524.)

The new law is effective immediately, and makes the following changes:

- **Changes the expiration date from December 31, 2009, to February 28, 2010**-- this extension means that persons who lose their jobs through an "involuntary termination" on or before February 28, 2010, will be eligible for COBRA Premium Assistance.
- **Lengthens the COBRA Premium Assistance period from 9 months to 15 months**--this expansion allows eligible persons who elect COBRA to receive COBRA Premium Assistance for almost their entire COBRA period (typically 18 months). As explained below, persons whose COBRA Premium Assistance expired at the end of November can now

resume their coverage retroactively and receive COBRA Premium Assistance through May, 2010.

- **Provides retroactive COBRA coverage and COBRA Premium Assistance for persons whose COBRA Premium Assistance expired before the extension**-- Under a special transition rule, persons whose COBRA Premium Assistance ended in November can re-elect their COBRA coverage if they had let it lapse for December, 2009. In order to resume COBRA coverage retroactively, the person will have 60 days after receiving a new notice to make the election and pay the 35% COBRA premium for the retroactive month of coverage. In addition, persons who elected to maintain COBRA coverage after the COBRA Premium Assistance expired will receive a refund or credit for the months in which full premium payments were made.
- **Clarifies that the cut-off date for COBRA Premium Assistance eligibility is based on termination date**--The new law makes it clear that a person is eligible for COBRA Premium Assistance based on an involuntary termination occurring on or before February 28, 2010, even if COBRA coverage does not actually begin before February 28, 2010. (The Department of Labor may provide further information about whether this change allows an employer to delay the start of



a terminated worker's COBRA coverage but still qualify for the full 15-month COBRA subsidy-- for example, if the employer pays for the worker's health coverage during a severance period.)

What should employers do now to ensure compliance with the new law?

- Check with your COBRA third-party administrator (TPA) to be sure that new notices explaining the extension will be provided in a timely manner:
 1. The plan administrator (or COBRA TPA) must provide a notice about the new law no later than February 17, 2010 to anyone who was receiving COBRA Premium Assistance on or after October 31, 2009, or who had an involuntary termination after that date and before December 21, 2009.
 2. The plan administrator (or COBRA TPA) must include the extension and expansion in the general COBRA Premium Assistance notice that is required to be provided to any eligible employee who experiences an involuntary termination after December 21, 2009.
- Employers that self-administer COBRA must be ready to distribute the new notices to the necessary persons in a timely manner after sample notices are issued by the Department of Labor (see below).

Will the Department of Labor (DOL) issue model notices that employers and COBRA TPAs can use?

- It is expected that the DOL will issue sample model notices before the end of January. In addition, the DOL and IRS will likely issue additional guidance to help employers and their COBRA TPAs understand how to comply with the new law. The DOL will post sample notices and any other guidance on its website, www.dol.gov/cobra.

Might Congress extend COBRA Premium Assistance again, beyond February 28th?

- Yes. In 2009, the House (in a separate bill focused on job creation) voted to extend COBRA Premium Assistance through June 30, 2010. The Senate has not yet taken up the House bill. So it is quite possible we will notify you again later this year of a second extension of COBRA Premium Assistance.

QUESTIONS OR ASSISTANCE?

If you have questions about this alert or would like our assistance in ensuring compliance with the new law, please contact Richard Cohen at (860) 251-5803, or any other member of our Employee Benefits Practice Group listed on the first page of this alert.

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One Constitution Plaza
Hartford, CT 06103-1919
860-251-5000

300 Atlantic Street
Stamford, CT 06901-3522
203-324-8100

289 Greenwich Avenue
Greenwich, CT 06830-6595
203-869-5600

12 Porter Street
Lakeville, CT 06039-1809
860-435-2539

www.shipmangoodwin.com



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