

TAXSAVER PLAN

"Your Satisfaction Is Our Success"

WHAT YOU NEED TO KNOW...

Please read the information provided in the most recent EBIA Weekly Article...

LEGISLATION EXTENDS COBRA PREMIUM SUBSIDY PROGRAM ONE MONTH AND MAKES SUBSIDY AVAILABLE FOR CERTAIN REDUCTIONS OF HOURS

[Temporary Extension Act of 2010, Pub. L. No. 111-144 (Mar. 2, 2010)] Available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4691enr.txt.pdf

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). (For more information on ARRA, as extended by the Department of Defense Appropriations Act of 2010 (2010 DoD Act), see our Checkpoint Newsstand article.)

==> 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). [EBIA Comment: 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. [EBIA Comment: 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. Although this statutory language might be interpreted (on its face) to permit a retroactive period of coverage with no COBRA premium, we don't think Congress could have intended that result.]

==> 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>.]

==> New Penalty Provisions. The Extension Act also amends ARRA to make clear that either affected individuals or the DOL (HHS, in the case of plans not subject to ERISA) may sue to enforce determinations made under expedited review procedures regarding an individual's entitlement to premium assistance. In addition, a new \$110 per day penalty provision is added allowing the DOL (or HHS) to assess a penalty against a plan sponsor or health insurer who fails to comply with such a determination within 10 days of receipt. [EBIA Comment: These new enforcement provisions are not retroactive; they become effective March 2, 2010, the date of enactment.]

==> Clarifying Changes Regarding DoD Act Transition Period and Other Matters. The Extension Act also makes some technical corrections to ARRA, as well as conforming amendments to align the language of the Department of Defense Appropriations Act of 2010 (2010 DoD Act) with agency guidance (including guidance on what periods may be included in an individuals' "transition period" under the DoD Act provisions).

Michelle's Law Extends Eligibility for College-Age Dependents

This information will remind you of the provisions of Michelle's Law, which makes an important change in the current law regarding continuation of coverage of college-age dependents on a medically necessary leave of absence.

Michelle's Law is effective for plan years beginning one year after the date of enactment. For calendar year plans, this will mean **January 1, 2010**.

Medically Necessary Leave of Absence. Michelle's Law sets forth new rules regarding "medically necessary leaves of absence" for dependent children. A medically necessary leave of absence is a leave of absence from a postsecondary educational institution, or any other change in enrollment at the institution, that:

- Commences while such child is suffering from a severe illness or injury;
- Is medically necessary; and
- Causes the child to lose full-time student status under the plan.

The child's attending physician must certify that the child is suffering from a severe illness or injury and that the leave of absence is medically necessary.

Michelle's Law thus maintains the child's plan eligibility when that eligibility would have otherwise ended due to the child ceasing to be a full-time student.

Continuation of Coverage. A group health plan may not terminate coverage due to a medically necessary leave of absence earlier than:

- One year after the first day of the medically necessary leave of absence; or
- The date the coverage would otherwise terminate under the plan.

While there is still some ambiguity with respect to this provision, presumably the child is eligible for COBRA upon the expiration of the coverage termination under the new law.

The child is entitled to the same benefits during the medically necessary leave of absence as if the child continued to be a full-time student and not on leave.

This allows the plan to make changes affecting all college-age dependent children, without singling out those on medically necessary leaves of absence.

If the plan sponsor changes group health plans and the new plan offers coverage to dependent children, the new group health plan shall be subject to the medically necessary leave of absence.

Individual Market Rules. Michelle's Law will apply to individual insured health plans in much the same manner as for group health plans.

LEGISLATIVE UPDATES – CHARLES GOES TO WASHINGTON:

Last week, Charles spent three days in Washington DC, visiting Capitol Hill and meeting with TPAs in our industry from across the country. It appears that we will all know more about the future of FSAs in the upcoming weeks. It does look like the \$2500.00 cap on Health FSAs will be put into place in 2011. The reimbursement of over-the-counter drugs will, most likely, be affected as well. Now is the time to contact your local state representative and voice your concerns about the future of FSAs. We will keep you posted.

While in DC, the IRS made informal comments in regards to how to handle FSA Debit Card debt. In the past, we have suggested that Employers tax their plan participants, both active and terminated, on any FSA Debit Card transactions that were not substantiated under the current IRS regulations.

The IRS confirmed that active and inactive plan participants should be taxed on any non-substantiated FSA Debit Card transactions after the run out period for the plan year has ended. The debt should be taxed in the same year that the debt is due, which is NOT necessarily the same as the plan year. The debt is due when in the year that the run out period ends. Lastly, and this is a **change** to what we have been told before and related back to our clients, both active and inactive plan participants should be taxed on their W-2 and the amount(s) not substantiated should be treated as gross income. There should not be any 1099s issued for FSA Debit Card debt.

5500 FILINGS – WHAT IS CHANGING?:

The DOL has changed the process to file your 5500 filings for the 2009 Plan Year. While you may still use a Third Party to prepare your filings, you will be required to submit the filing electronically. In order to do this, you will be required to set up a username and password to submit the filing to the DOL electronically.

This step requires completing basic contact information on the EFAST2 website to create a user ID, PIN and password. (The user ID and PIN are for signing and transmitting a completed Form **5500**; the user ID and password are for accessing parts of the EFAST2 website.) Because EFAST2 is a completely separate system from the old EFAST system, users of the old system are required to register for and obtain new electronic credentials under EFAST2 in order to submit their **filings** electronically under that system. Once registration is complete, users can update their email address or other contact information by logging on to EFAST2, clicking on the "Profile" link in the navigation bar, and changing the relevant information.

If you use Tax saver Plan to prepare your 5500 Filings, instructions to set up your username and password will be provided with your completed form.

Thank You,

Charles Zelazny
President

Kelsey Zelazny
Vice President

Marsha Hooper
COO