

COMPLIANCE UPDATE

COBRA Updates

COBRA AS AMENDED BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA). The Act contains legislation that amends the Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees who lose group health plan coverage due to involuntary termination will now be eligible for a 65% federal subsidy payment toward the cost of their COBRA premiums. The termination must occur between September 1, 2008 and December 31, 2009. COBRA excludes coverage for those terminated for gross misconduct, so the subsidy program would not apply to these employees. The employee will pay 35% of the premium cost under the plan's normal payment procedures. The entity that receives the 35% payment (ex.- employer, multiemployer, or insurer) is then entitled to receive the 65% subsidy as either a payroll credit or refund payment.

The full subsidy amount is only available to individuals whose modified adjusted gross income is lower than \$125,000 during a year in which the subsidy is received. The income limit for a married couple filing jointly is \$250,000.

Eligible employees may receive the subsidy up to nine months or until the individual becomes eligible for another group health plan or Medicare. The subsidy applies to both federal COBRA and similar state continuation coverage. The subsidy applies to all group health plans offered through continuation coverage except for health FSA coverage.

Within 60 days of the Act's enactment date, the group health plan must send a notification to those individuals who were involuntarily terminated since September 1, 2008 and who would be eligible for the subsidy payment. Those who are not currently continuing coverage through COBRA would be given a new election period that ends 60 days after the date of the notice. The coverage would be effective on the first period of coverage following the enactment date. The period of coverage for most plans is monthly. Thus, the first period of coverage following the enactment date will typically be March 1, 2009. If the COBRA election will result in a gap of 63 days or more, the gap in coverage shall be disregarded for purposes of pre-existing condition exclusions. The maximum period of coverage under COBRA is not extended. The 18-month period of coverage would continue to be counted from the original qualifying event.

The required notification must inform the individuals of:

- » their eligibility and rights regarding reduced COBRA payments through the subsidy program
- » the forms necessary for establishing eligibility
- » contact information for the plan administrator
- » the dates of the extended election period
- » their obligation to inform the plan if they become eligible under another group health plan or Medicare

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The Department of Labor and Health and Human Services are expected to release a model notice within 30 days of the Act's effective date.

If an employer offers more than one plan option to active employees, the employer may permit subsidy-eligible individuals to elect coverage in a lower-priced plan, even if the individual was not previously enrolled in that plan. If the employer permits this option, the notice described above must include a description of this provision and must provide an individual a 90-day election period to choose the other plan option.

Going forward, a plan's COBRA Election Notice should be revised to include an explanation of the eligibility, provisions, and conditions of the subsidy program.

For additional information on this Act, visit:

<http://www.dol.gov/ebsa/pdf/COBRAPremiumReductionProvision.pdf>

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