
BENEFITS ALERT

Economic Stimulus Bill Expands COBRA Requirements

On **February 17, 2009**, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA), which in part, provides for a nine-month federal government subsidy of COBRA premiums for employees who are involuntarily terminated. The ARRA combines \$281 Billion in tax cuts with \$311 Billion in new government spending and \$193 Billion earmarked for benefit programs.

While this is welcome relief to all of the eligible insureds, this law does impose a significant administrative burden on employers.

What is COBRA continuation health coverage?

Congress passed the landmark Consolidated Omnibus Budget Reconciliation Act (COBRA) health benefit provisions in 1986. The law amends the Employee Retirement Income Security Act, the Internal Revenue Code and the Public Health Service Act to provide continuation of group health coverage that otherwise might be terminated.

What does COBRA do?

COBRA provides certain former employees, retirees, spouses, former spouses, and dependent children the right to temporary continuation of health coverage at group rates. This coverage, however, is only available when coverage is lost due to certain specific events.

Highlights of ARRA as it applies to COBRA:

- ✓ **Effective** – The new requirements under the bill will be effective for most employers March 1, 2009 with a 60 day implementation/transition period. This special 60-day election period for the AEI starts the day they are provided notice of availability of the COBRA subsidy.

- ✓ **Election Period** – Retroactively allows workers who became involuntarily jobless as of September 1, 2008, and rejected COBRA.
- ✓ **Subsidy** - Provides a 65% federal subsidy of COBRA premiums (includes 2% admin fee) for a maximum of nine month for certain individuals who are COBRA qualified beneficiaries because of a covered employee's involuntary termination of employment. This subsidy also applies to healthcare continuation coverage if required by the state.
- ✓ **Eligible** - Available to "Assistance Eligible Individuals" (AEIs)
 - Involuntary termination of employment
 - Between September 1, 2008 and December 31, 2009
 - AEI's include spouse and dependent children if covered on qualifying event date
- ✓ **Income Limitations** – Subsidy is phased out to individuals making \$125,000 (\$250,000 joint return) and completely eliminated at \$145,000 (\$290,000 joint return)
- ✓ **Types of Coverage** – Subsidy is available for most types of health coverage (Medical, Dental, Vision)
- ✓ **Duration of Subsidy** – Nine month maximum for subsidy.
 - AEI loses subsidy upon eligibility another group health plan (excludes Dental, Vision, HRA, HSA) or Medicare
 - AEI is required to notify employer or be subject to penalty of 110% of subsidy.

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- ✓ **“Second Chance” Election Period** – Employees involuntarily terminated on or after September 1, 2008 who did not elect COBRA coverage or did and ceased payments.
 - Can elect coverage effective March 1, 2009. (No retroactive coverage)
 - 60 Day election period. (Appears to have 45 days to pay premium)

- ✓ **Mechanics of the Premium Collection** – As the AEI pays premium, the employer will pay the remaining 65% of premium and recover the premium through payroll tax credits. If payroll tax credits exceed premium then the treasury will issue a check back to the employer. Process still unclear.

- ✓ **Communications and Disclosures** - Employers are required to notify all AEI’s no later than April 18th, 2009 (even if they declined COBRA in the past) or be subject to multiple penalties.
 - Regulators are required to provide “model notices” by March 19th.
 - Statutory penalties of up to \$110 a day may be recovered by qualified beneficiaries for a plan administrator’s failure to provide COBRA notices.
 - IRS may assess excise taxes for each day a plan fails to comply with COBRA.

Steps Employers Should Consider Now:

As is often the case with “emergency legislation”, there are many details that will be described in better detail through further guidance from the IRS and the Department of Labor. In the interim, we recommend that employers begin considering the following steps:

Step 1 – Compile a list of all individuals (including any eligible spouses and dependents who were enrolled in coverage prior to the termination) with “qualify events” for COBRA between September 1, 2008 and March 17, 2009. This is a required group for COBRA notices. Confirm prior notices and addresses.

Step 2 – Begin calculating amounts that AEI’s will be required to pay for each tier of coverage in the new notices.

Step 3 – Decide your communication strategy. Do you wait for the model notices for AEI’s with qualifying events prior to February 17th? Do you have administrative capacity to make timely notices.

Step 4 - Modify applicable COBRA premium billing for March 2009 coverage to take into account the 65% subsidy.

Step 5 – Determine whether to (refund / credit) premium for amounts received in March & April 2009 for likely inaccurate premiums received.

Step 6 – Review or establish a formal record keeping system to make sure that as an employer you are able to report AEIs to the government if required and so that payroll tax credits are handled in a way that does not create additional liability for underpayments when the tax credit is taken.

This legal alert provides an overview of a new law.

It is not intended to be, and should not be construed as legal advice for any specific factual situation.

Educator Resources

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