



Winter 2009

COBRA and the American Recovery and Reinvestment Act (ARRA)

On February 17, 2009 President Obama signed the American Recovery and Reinvestment Act (ARRA) which included provisions which would allow certain terminated employees (and their qualified beneficiaries) to pay reduced premiums (35%) for COBRA coverage for a designated period of time. The remaining 65% of the premium is to be paid by the employer, multi-employer plan or insurer (in most cases the employer under a group health plan) who will then receive a reimbursement of the subsidy as a credit on payroll taxes.

Eligibility

- Employees (and their qualified beneficiaries) eligible for COBRA coverage (or Cal-COBRA coverage) who were involuntarily terminated beginning September 1, 2008 and ending December 31, 2009 for reasons other than those for which COBRA coverage is not generally available (e.g., gross misconduct).
- Individuals with adjusted gross income of \$125,000 or more (\$250,000 if married, filing jointly) may only be eligible for a partial subsidy or may not be eligible for any subsidy.

Limitations Period

- The subsidy continues for nine (9) months, until the expiration of the COBRA coverage period, or the date on which the individual is eligible for coverage under another group health plan or Medicare, whichever occurs first.
- There are sanctions for individuals who fail (without reasonable cause) to notify the plan administrator of eligibility for other coverage. [Penalty of 110% of premium subsidy.]

Previously Terminated Employees (Special Rules)

- Eligible employees who were terminated between September 1, 2008 and February 17, 2009 may elect COBRA coverage from February 17, 2009 until 60 days after notice to them is provided.
- Any such coverage elected under this extended election period begins as of the first period of coverage following February 17, 2009.

Notices

- Employees who become eligible for COBRA coverage after February 17, 2009 must be given additional notification (at the time they receive the current COBRA notice) regarding the availability of premium reduction and the option to elect different coverage (if permitted by the employer).
- Employees who were involuntarily terminated between September 1, 2008 and February 17, 2009 must receive the notice by April 18, 2009.
- There are specified requirements for the notice including a description of the obligation of the qualified beneficiary to notify

the plan of eligibility for coverage under another group health plan and the penalty for failure to do so.

- The Department of Labor is expected to publish a Model Notice on or before March 19, 2009.

Reimbursement of Premium Assistance

- The employer (or other entity, as appropriate) may reduce its payroll tax liability by an amount equal to the 65% of the COBRA premium paid on behalf of eligible individuals.
- The Internal Revenue Service (IRS) has issued new a new Form 941 (and accompanying instructions) which includes a box for the total COBRA premium assistance payments. The Form also requires information as to the total number of individuals for whom such assistance was provided.
- The entity claiming reimbursement must submit reports to the Secretary of Labor, as required.

STEPS TO TAKE

- Identify potential eligible individuals (and their qualifying beneficiaries) previously terminated and eligible for (or who have currently elected) COBRA coverage.
- On or before April 18, 2009 provide the special enrollment notice to previously terminated employees (including their qualifying beneficiaries).
- Provide additional notification to all employees receiving COBRA notices for a qualifying event on or after February 17, 2009.
- Develop COBRA administration procedures for receipt of the 35% employee from eligible individuals; payment of 65% of the premium; tracking the appropriate period for the subsidy; waiver of the subsidy by high income individuals; notification by an individual who is no longer eligible for the subsidy; obtaining reimbursement of the premium through payroll tax credits; and collecting data that may be needed for required reports.
- Review current practices for employer-paid COBRA coverage and ARRA implications.

For assistance in meeting your legal obligations with regard to COBRA and the ARRA, contact Jeanne Flaherty or Lynn Ryder at Employer's Legal Advisor, Inc.



Jeanne Flaherty is the President and Managing Attorney of Employer's Legal Advisor, Inc., which represents and advises employers on all employment matters. The firm specializes in conducting employment practices compliance reviews and advising employers on day-to-day legal issues in the workplace.

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