

COBRA Subsidy Overview for Termed Employees February 2009

The American Economic Recovery and Reinvestment Plan signed by the President includes significant changes to COBRA. The answers to many common questions are set forth below; however, it is likely that additional questions will arise once the regulatory changes are implemented. Below is a summary of the bill as we understand it at this juncture. The following provisions are included:

A 65% subsidy of an involuntarily terminated former employee's COBRA premium.

- a) **Eligible Benefits:** The subsidy applies to medical coverage or any other combination of coverage, such as dental only, vision only, if the employer allows election of coverage by benefit. Healthcare FSA is not eligible for the subsidy.
- b) **Length of Subsidy:** The subsidy must be offered until the earliest of:
 - i) 9 months from the COBRA begin date or second chance begin date;
 - ii) the date the former employee is "eligible" for Medicare benefits or other group health coverage;
 - iii) the date the former employee's COBRA period expires; or
 - iv) the date the former employee no longer pays their 35% portion of the premium.
- c) **Eligibility:** Subsidy eligible individuals are those individuals and their family members who
 - i) were/are involuntarily terminated between September 1, 2008 and December 31, 2009
 - (1) Note: the exclusion for "gross misconduct" is still valid, however, involuntary termination includes loss of employment for job performance reasons.
 - (2) Note: former employees eligible for COBRA effective 9/1/2008 because of an employment termination that occurred before 9/1/2008 would not be eligible for the subsidy.
 - ii) There are three categories of eligible individuals that qualify for the subsidy:
 - (1) those who were involuntarily terminated and previously declined COBRA;
 - (2) those who were involuntarily terminated and were on COBRA but later dropped coverage, but still have COBRA remaining eligibility, and
 - (3) those who were involuntarily terminated and are currently on COBRA.
- d) **Timing:**
 - i) By April 17, 2009 all individuals who had a COBRA qualifying event between September 1, 2008 and December 31, 2009 must receive a new 60-day period to elect COBRA with the subsidy commencing on March 1st for most plans.
 - (1) Note: If the employer offers alternative lower cost plan options, the election period is 90 days instead of the 60 days.
 - ii) Those who were involuntarily terminated and are currently on COBRA should receive a notice of the new premium amount and should be notified of the special enrollment rights that apply to eligible dependents covered at the time of the involuntary termination.

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- iii) A refund and credit process will occur to account for March (and likely April) paid premiums due to timing issues.
- iv) The subsidy is not retroactive and is effective March 1, 2009. The subsidy does not apply to premiums incurred between September 1, 2008 and March 1, 2009. Former employees will receive creditable coverage rights under HIPAA for the period they did not have health coverage thus eliminating any potential break in coverage for preexisting condition provisions.
- e) **Income Restrictions:** Individuals who receive the subsidy and have a single/joint adjusted gross income of \$145,000 / \$290,000 in the tax year that they receive the subsidy must refund the amount of subsidy received that year back to the government as additional income tax liability on their tax return. For those with \$125,000 / \$250,000 of income but less than \$145,000 / \$290,000 the income tax is a sliding scale. The employer is not required to verify income prior to paying the subsidy and receives no penalty for a tax credit received for ineligible individuals.
- f) **Taxes:** The subsidy amount is not a taxable event for the recipient.
- g) **Funding:** Employers are responsible to pay the COBRA subsidy, but they will receive a corresponding reimbursement through an offset or credit to their federal payroll tax obligations.
- h) **State Continuation:** Continuation coverage that qualifies for the subsidy is not limited to COBRA coverage – it also includes continuation coverage required under comparable State law and continuation coverage for health plans maintained by the State or Federal government. We are waiting for further clarification from each affected state.
- i) **Excluded Proposals:** The bill does not expand the eligibility period for COBRA, nor does it include the 55 and 10 rule proposed in the original House version which would have required an extended COBRA coverage period for individuals age 55 and older or who had ten or more years of service with an employer.

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