

Employer Alert!

February 17, 2009

COBRA Premiums to Be Subsidized For Some Former Employees and Their Families

Employers must quickly prepare for an increase in the number of COBRA elections and new COBRA notice requirements. The economic stimulus bill officially referred to as the American Recovery and Reinvestment Act (The Act) was signed into law on February 17th, 2009 by President Obama. The Act contains a Federal subsidy of COBRA premiums for certain eligible individuals. The subsidy will be available eligible individuals beginning with March 2009 coverage, so employers have very little time to prepare for the administrative changes necessary to comply with the new rules.

The Premium Subsidy

- The Federal Government will provide a 65% subsidy of COBRA premiums. The eligible individual will be required to pay their 35% of the COBRA premium in a timely basis under the same rules that normally apply to COBRA qualified beneficiaries.
- The subsidy is available to individuals covered by State Continuation Rules as well as Federal COBRA
- The subsidy provides assistance for up to nine (9) months of coverage.
- The subsidy would end as soon as an individual is eligible for other group coverage, or their eligibility for COBRA ends (such as for failure to pay premium, or reaching the end of their COBRA eligibility).

Eligibility

- The subsidy is available to individuals who have been involuntarily terminated from their job between September 1, 2008 and December 31, 2009 and is eligible for COBRA or State continuation during that time.
- The subsidy extends to family members who have lost coverage due to the employee involuntary termination, but does not apply to any other COBRA event.
- The subsidy begins to be phased out for individuals with adjusted gross incomes (AGI) over \$125,000 (\$250,000 for those filing jointly). No subsidy is available to anyone with an AGI over \$145,000 (\$290,000 for joint filers). Employers are not required to manage eligibility based on income restrictions. Employers must clearly communicate the rules to eligible individuals in COBRA notices and the individuals must then report subsidies received on their tax returns. Income based adjustment would be made to the individual tax liability at that time.

Notice Requirements

- Employers will be required to send a special notice to all individuals affected by an employee's involuntarily termination since September 1, 2008, whether they have elected to continue COBRA or not, no later than April, 18, 2009 (60 days from enactment).
- Employers must modify current COBRA election notices or provide separate, supplemental notices which describe the subsidy and eligibility requirements to all individuals who have COBRA events from now until December 31, 2009.
- The Act requires DOL, IRS, and/or DHHS to develop a model notices by March 19, 2009 (30 days from enactment).

Election Provisions

- A second special election period must be offered both to eligible qualified beneficiaries (QBs) who originally declined COBRA coverage, and to eligible QBs who elected and subsequently terminated COBRA coverage.
- The special election period begins February 17, 2009 (the date of enactment) and ends 60 days after the date the employer provides the required special notice. This provision makes the quick delivery of notices very important since elected coverage will be effective retroactively to March 1st, 2009.
- Eligible individuals who did not elect coverage during their initial COBRA election period would have a second opportunity to elect the subsidized coverage. If they elect, coverage and premiums would be due prospectively from March 1, 2009 coverage forward. Importantly – No new pre-existing limitation may be imposed on individuals who elect even if there has been a break in coverage of more than 63 days.
- If an individual has already elected COBRA the subsidy would apply only on a prospective basis from March 1, 2009 coverage forward.
- Electing the subsidy would not change the original COBRA event date or the maximum period of coverage.
- Individuals receiving the subsidy are required to notify the employer when they become eligible for other insurance. If they fail to do so they are subject to a penalty of 110% of the amount of the subsidy.
- An employer may, but is not required, to allow an individual to change their health insurance coverage to a new option with the same or lower premiums. This option must be a plan that is also available to non-COBRA employees.

Recovery of Premiums Paid

- The employer will recover the 65% of the premium not paid by the individual through a credit applied toward the employer's payroll taxes. If this credit is not enough to cover the cost born by the employer, the Federal Government will directly reimburse the employer for the difference.
- The IRS is required to communicate how the employer is to apply this credit amount when filing payroll taxes.
- The employer will be required to submit a report with the IRS containing information about the amount of the subsidy, and the individuals who received the subsidy.
- If the insurer is collecting premiums directly from the COBRA QB, there will be a mechanism developed for the insurer to be directly reimbursed by the Federal Government for the subsidy amount.

Extension of COBRA Coverage Periods

Earlier versions of the bill included provisions that would have extended the COBRA continuation period for individuals who are age 55 or over or individuals who have worked for the employer at least 10 years. These provisions were not included in the final legislation.

What to Do Now

Obviously this is very short timeframe to implement the administrative changes necessary to comply with this new legislation. Here are some things the employer can do immediately.

- Employers should begin by figuring out to whom the special notice must be sent. Any COBRA QB affected by an employee's involuntary termination since September 1, 2009 will need to receive this special notice by April 18th, 2009.
- The HR/payroll department will need to create the tracking mechanism necessary report subsidy detail to the IRS.
- Some employers will wait for release of the new model notices, but due to the limited time and the fact that coverage will be retroactive to March 1st, employers should consider sending their own special notices ASAP. Contact your insurer or COBRA administrator to see if they will provide sample language prior to the release of the model notices.

Notice of significant developments will be posted at www.wjflynnandassociates.com, or for more information contact Bob Radecki at bob.radecki@wjflynnandassociates.com.