

COBRA Obligations Under the American Recovery and Reinvestment Act of 2009

What does the new law, commonly referred to as the Obama stimulus package, require with regard to COBRA rights and obligations?

Requirements And Statutory Definitions

The American Recovery and Reinvestment Act of 2009 (the "ARRA") temporarily reduces the premium for COBRA coverage for "assistance eligible individuals." An "assistance eligible individual" means a person who meets **all of the following requirements**:

- Becomes eligible for COBRA continuation coverage at any time during the period September 1, 2008 to December 31, 2009;
- Elects COBRA coverage (either when first offered COBRA coverage or during the additional election period required by the ARRA); **and**
- The COBRA election opportunity results from the employee's involuntary termination of employment occurring during the period September 1, 2008 to December 31, 2009.

All three of the above requirements must be met in order for the person to be an "assistance eligible individual" under the ARRA. A person who becomes COBRA eligible during the above-referenced time period is not an "assistance eligible individual" unless the individual's loss of health care coverage was due to the involuntary termination of his or her employment during that time period (i.e., from Sept. 1, 2008 to Dec. 31, 2009).

Assistance eligible individuals who elect COBRA coverage pay only 35% of the full monthly COBRA premiums otherwise due under the group health plan. The ARRA treats eligible individuals who pay 35% of their monthly COBRA premiums as having paid the full amount. The "person to whom premiums are payable" (often, the employer sponsoring the group health plan) then recovers the remaining 65% of the monthly COBRA premium by taking the subsidy amount as a credit on

its IRS Form 941 quarterly employment tax return. If the credit amount is greater than the taxes due, the Secretary of the Treasury will directly reimburse the employer (or other responsible entity) for the excess amount.

The premium subsidy applies to periods of COBRA coverage beginning on or after February 17, 2009. A "period of COBRA coverage" is a month or shorter for which the plan charges a COBRA premium. The premium subsidy starts on March 1, 2009 for plans that charge for COBRA coverage on a calendar month basis.

However, the premium subsidy for "assistance eligible individuals" ends on one of the following dates, **whichever occurs first**:

- when the individual becomes eligible for health coverage under another group health plan (or under Medicare), or
- after the individual receives the COBRA subsidy for 9 months, or
- when the maximum period of COBRA coverage ends (typically, 18 months from the loss of group health coverage).

Assistance eligible individuals who are receiving the COBRA subsidy must inform their group health plans if and when they become eligible for coverage under another group health plan or become eligible for coverage under Medicare.

In addition, if the annual, adjusted gross income of an assistance eligible individual is more than \$125,000 (or \$250,000 for married couples filing a joint federal income tax return), that individual is **still eligible** to receive the COBRA premium subsidy. However, if that individual accepts the subsidy, he/she will be required to repay the government for the full amount of the subsidy through an increase in his/her income tax liability for the year in which he/she received the subsidy.

Special COBRA Election Opportunity

If an assistance eligible individual was offered COBRA continuation coverage as a result of an involuntary termination of employment that occurred any time from September 1, 2008

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to February 16, 2009, **and** that individual either failed to elect COBRA coverage at that time or elected COBRA coverage and later discontinued it, that individual must now be given a special written notice and additional opportunity to elect COBRA coverage and apply for the subsidized COBRA premium.

Required Changes in COBRA Notice And Election Forms

Group health plans are required to notify qualified beneficiaries of the premium subsidy and other information about their rights under the ARRA as follows:

- A general notice is required to all qualified beneficiaries, whether they are currently enrolled in COBRA coverage or not, who experience a COBRA qualifying event (i.e., the loss of coverage under an employer-sponsored group health plan for reasons other than “gross misconduct”) during the period September 1, 2008 to December 31, 2009. This notice may be provided separately or as part of the COBRA election notice form issued to affected individuals.
- A notice of the extended COBRA election period is required to be given to all assistance eligible individuals (and to any individual who would be an assistance eligible individual if a COBRA continuation coverage election were currently in effect) who either initially did not elect COBRA continuation coverage, or who elected, but later discontinued, COBRA continuation coverage. This required written notice must be issued to the necessary recipients within 60 days after February 17, 2009.

The above-referenced notices must include the following categories of information:

- The forms necessary for establishing eligibility for the COBRA premium subsidy;
- Contact information for the plan administrator or other person maintaining relevant information in connection with the COBRA premium subsidy;
- A description of the second election period (if applicable to the individual);
- A description of the requirement that the assistance eligible individual notify the plan when and if he/she becomes eligible for coverage under another group health plan or under Medicare, and a description of the penalty for failing to do so;
- A description of the right to receive the premium subsidy

and the conditions for receiving the subsidy; and

- If offered by the employer, a description of the option to enroll in a different coverage option under the group health plan.

For More Information

Please contact a member of our Labor & Employment Law Practice Group at (419) 249-7100.

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