

FEDERAL GOVERNMENT TO SUBSIDIZE COBRA PREMIUMS

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65% subsidy for up to nine months

The American Recovery and Reinvestment Act of 2009 includes a new subsidy of COBRA premiums for individuals who are involuntarily terminated from employment between September 1, 2008 and December 31, 2009. Starting March 1, 2009, such former employees and their family members need only pay 35% of the normal COBRA premium. The employer will then get a credit against its payroll taxes for the balance of the COBRA premium. The IRS will publish instructions for claiming the credit.

The subsidy ends on the earliest of the date:

- the individual's COBRA premiums have been subsidized for nine months,
- the individual ceases to be eligible for COBRA, or
- the individual becomes eligible for another group health plan. The individual is supposed to notify the group health plan when he or she becomes eligible for another plan. Note that while eligibility for another group health plan ends an individual's right to the subsidy, it does not end the individual's right to continue COBRA at his or her own expense. Eligibility for COBRA does not end until the individual actually enrolls in another group health plan.

The subsidy is not available to employees who were terminated for gross misconduct or employees who voluntarily terminated employment. Also, the subsidy is not available for individuals entitled to COBRA due to divorce, loss of dependent

status, death, or reduction in hours. The Department of Labor will review disputes as to eligibility for the subsidy.

The subsidy is phased out for individuals with adjusted gross income in excess of \$125,000 (\$250,000 in the case of a joint return) in the year the subsidy is received. If the subsidy is provided to an individual with adjusted gross income over the threshold, it will be recaptured on the individual's taxes. An individual also has the right to waive the subsidy.

Notice requirements

The Department of Labor is supposed to publish model notices by March 19, 2009 (30 days after the bill was signed into law).

Employers are expected to use the new notices (or a variation with the same information) for future COBRA qualifying events. Also, employers must send new notices to all employees who were entitled to COBRA as a result of involuntary termination from employment on and after September 1, 2008 – regardless of whether those employees elected COBRA when initially eligible for it. Employers have until April 18, 2009 (60 days after the bill was signed into law) to send the new notices. The IRS may require that new notices be sent to all employees who were entitled to COBRA as a result of termination of both voluntary and involuntary employment.

Involuntarily terminated employees who did not elect COBRA (and involuntarily terminated employees who elected

COBRA but subsequently dropped it) have 60 days after the receipt of the new notice to make a new COBRA election. The right also extends to family members. Any new COBRA election does not extend the period of COBRA continuation coverage. Rather, COBRA coverage would start March 1, 2009 and would end 18 months after the termination of employment. There would be a gap in coverage between the termination of employment and March 1, 2009.

First steps

You may want to identify employees who were involuntarily terminated on or after September 1, 2008. If you outsource COBRA administration, contact your COBRA administrator to

make sure they are aware of the changes and are taking steps to implement the subsidy requirements. You may also want to touch base with your insurers (including any stop loss carriers).

The IRS and Department of Labor are expected to provide forms and additional guidance. The Department of Labor has set up a website, www.dol.gov/ebsa/COBRA.html, where you can subscribe to be notified when the Department of Labor posts guidance on the new COBRA requirements. We will be monitoring developments and expect to provide updated Alerts on www.vorys.com. Please contact us if you want more information or want to discuss the application of the COBRA provisions to your specific situation.

This client alert is for general information purposes and should not be regarded as legal advice.

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