

## **New COBRA Amendments Require Immediate Action!**

### **Urgent Update**

The massive American Recovery and Reinvestment Act of 2009 (the federal “stimulus law”), signed into law on February 17<sup>th</sup> includes a lot of federal spending dollars and tax cuts. It also includes a COBRA provision that *significantly impacts most employers*. Basically, it’s time to forget what you are doing and figure out how the COBRA subsidy provision will affect you and what you are going to do about it. This really does *necessitate urgent action* by organizations. The following are *some* of the key provisions of the new law. You’ll need to do further research or contact a relevant professional for more details.

**1. What do the COBRA changes require?**

Under the law most employees who were involuntarily terminated between September 1, 2008 and December 31, 2009 and their covered dependents, would be eligible for a subsidy of 65% of the COBRA premiums they’re required to pay.

**2. What employers are covered?**

Virtually all employers with group health plans must comply with the new law. Private and governmental employers subject to COBRA (basically those with 20 or more employees) must comply. Small employers that are subject to state “mini-COBRA” may also be covered.

**3. Who pays for the 65% subsidy?**

Employers that provide group health insurance must initially cover the 65% premium subsidy. Employers will be reimbursed for the subsidy via a credit against their federal payroll taxes.

**4. Which employees are eligible for the subsidy?**

Employees and their covered dependents who are (or were) covered under an employer’s group health plan and who lose (lost) coverage due to an employee’s involuntary termination between September 1, 2008 and December 31, 2009 are eligible. While the intent of the law is to assist employees who were terminated in reductions in force, it appears that nearly all involuntarily terminated employees and their dependents (qualified “assistance eligible individuals”) may qualify.

Individuals terminated for “gross misconduct,” who did not receive COBRA coverage (as allowed by COBRA), are not covered. Additionally, more highly compensated individuals are eligible for a declining subsidy or none at all.

**5. How long does the subsidy last?**

The subsidy lasts for up to 9 months. The new law does not extend the maximum COBRA continuation periods. Coverage also ends if an individual becomes eligible for another plan, a health flexible spending account, or Medicare or Medicaid.

**6. What does the subsidy cover?**

The subsidy covers medical, dental, and vision benefits, but not medical flexible reimbursement plans

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**7. When does this start?**

“Assistance eligible individuals” are eligible for subsidy payments effective at the first period of coverage, beginning on or after the bill was signed into law (February 17<sup>th</sup>). Practically, for most employers, that date is March 1<sup>st</sup>. For the first 60 days after the law was enacted employers may require that the individual pay the full premium. However, once the 60 day period ends, the employer must either refund the excess amounts or apply them to future subsidized premiums.

**8. What about individuals who chose not to use COBRA before this law was passed?**

Employees terminated as early as September 1, 2008, who did not elect COBRA coverage, would effectively have a “do over” in the form of a new election period. These employees would have 60 days after receipt of required notices to elect to COBRA coverage at the 35% rate. Their COBRA coverage would start on the first period of coverage after February 17<sup>th</sup> (generally March 1) and continues to the date that would have ended their coverage, had they elected COBRA initially. Further, the law requires that employers find past, eligible employees and inform them of the new subsidy program.

**9. What about eligible employees who elected COBRA before the law was passed?**

Such employees would be eligible for the subsidy, but not retroactive to their termination dates. The subsidy will generally apply to premiums paid for periods of coverage beginning on or after March 1, 2009.

**10. What employer notices are required?**

Employers are required to provide extensive notification and will be required to amend (temporarily) their COBRA election notices. Within 60 days after February 17<sup>th</sup>, employers must notify former, eligible employees and their dependents. The U.S. Department of Labor is supposed to provide a model notice within 30 days of the law's enactment.

**11. What should you do now?**

- A. Take a deep breath, have some comfort food, and prepare to act quickly.
- B. Contact your COBRA administrator, insurance provider, attorney or other resource for more, detailed information about the new law and how it might apply to you.
- C. Determine if you have involuntarily terminated any employees since September 1, 2008. Figure out how to track them down and prepare notices to eligible employees and their dependents telling them about the subsidy.
- D. Determine a procedure for identifying eligible employees involuntarily terminated between now and December 31, 2009. Revise regular COBRA notices to incorporate the changes.
- E. Get with your payroll department (or vendor) to ensure that it is ready to deal with the subsidy payments and reimbursements.

**Good luck. I'm afraid you'll need it.**

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