



## **IMPORTANT CHANGES TO COBRA LAW**

**The Federal stimulus package enacted on February 17, 2009, which is officially called the American Recovery and Reinvestment Act of 2009 (ARRA), contained important changes in the COBRA laws that are significant to virtually every employer. The new law provides a COBRA subsidy for individuals involuntarily terminated between September 1, 2008 and December 31, 2009. Individuals who were terminated after September 1, 2008 and originally declined COBRA coverage may have a second chance to elect COBRA. Employers must take immediate action to ensure compliance with notice and other requirements of the new law.**

**The new federal statute provides that certain individuals who are eligible for health insurance continuation under COBRA or similar state laws, will receive a subsidy equal to 65% of the insurance premium for periods of coverage beginning on or after February 17, 2009. These individuals are required to pay only 35% of the premium. The employer pays the rest of the premium, but then recovers the subsidy as a credit on its quarterly federal employment tax return. The employer may provide the subsidy, and take the tax credit, only if it has received the 35% premium payment from the individual. The following is a brief summary of details concerning how this new COBRA subsidy will work.**

**1. Employers Subject to Compliance with COBRA Subsidy Requirements.**

**The COBRA subsidy under ARRA applies both to employers covered by COBRA (20 or more employees) and to employers covered by any state continuation law such as the Massachusetts Mini-COBRA statute, which covers employers of between 2 and 19 employees.**

**2. Subsidy Amount.**



The employee, or someone on behalf of the employee other than the employer, must pay 35% of the premium. Employers must pay the remaining balance of the COBRA premium (65% of the full premium), for such individuals. The premium subsidy is reimbursable to the employer as a credit against employment taxes on the employer's quarterly tax return.

**3. Eligibility Income Limits.**

The premium subsidy is not included on the individual's income. However, if an individual's modified adjusted gross income for a tax year in which the subsidy is received exceeds \$145,000 (or \$290,000 for joint filers), then the amount of the subsidy during the tax year must be repaid. For taxpayers with adjusted gross income between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers) the amount of the premium subsidy that must be repaid is reduced proportionately.

**4. Subsidy Coverage Period.**

The premium subsidy applies to periods of coverage beginning on or after February 17, 2009. A period of coverage is a month or shorter period for which the employer plan charges a COBRA premium. The subsidy begins on March 1, 2009 for plans that charge for COBRA coverage on a calendar month basis. Premiums for coverage prior to February 17, 2009 are not subsidized.

The maximum length of the subsidy is 9 months, but eligibility will end upon the occurrence of certain events, including: the date on which the individual becomes eligible for other group coverage (or Medicare); when the maximum period of COBRA coverage ends (generally 18 months from the employee's termination); or when coverage is terminated for non-payment of premium as established by COBRA.

**5. Employees Eligible to Receive COBRA Subsidy.**

Qualified beneficiaries, employees and/or dependents are eligible for the subsidy if they lost coverage or lose coverage under their group health plan between September 1, 2008 and December 31, 2009 and if the qualifying event was the result of the employee's involuntary termination. The term "involuntary termination" has not yet been fully defined. It is expected that the U.S. Department of Labor will issue guidance on this definition.

**6. Special COBRA Election Opportunity.**

Individuals involuntarily terminated from September 1, 2008 through February 16, 2009 who did not elect COBRA when it was first offered or who



did elect COBRA, but are no longer enrolled (for example because they were unable to continue paying the premium) have a new election opportunity. This election period begins on February 17, 2009 and ends 60 days after the plan provides the required notice. This special election period does not extend the period of COBRA continuation coverage beyond the original maximum.

**7. Employer Notice.**

Employer plan administrators must provide notice about the subsidy to individuals who had or have a COBRA qualifying event during the period from September 1, 2008 through December 31, 2009. Plan administrators may provide notices separately or along with notices they provide following a COBRA qualifying event. This notice must go to all individuals, whether they have COBRA coverage or not, who had a qualifying event on or after September 1, 2008.

**8. Immediate Action to Comply with ARRA.**

Employers must immediately determine which individuals are eligible for the subsidy. The list includes all qualified beneficiaries, including dependents who become eligible for COBRA on or after September 1, 2008 due to an employee's involuntary termination.

Employers must notify those eligible individuals who accepted COBRA, and whose coverage remains in force, of the availability of the subsidy beginning February 17, 2009 (March 1, 2009 for plans that charge for COBRA coverage on a calendar month basis).

Employers must also send notices by April 17, 2009 of the special COBRA election opportunity described above to those eligible individuals who declined COBRA continuation coverage during their initial election period, and those who initially elected COBRA and subsequently cancelled their coverage. Such individuals have a period of 60 days from the delivery of the employer's notice within which to elect COBRA.

Employers must revise future COBRA notices for qualifying events that occur on or before December 31, 2009 as a result of involuntary termination to provide information concerning the COBRA subsidy program.

**9. Other Issues for Employers.**

The COBRA subsidy amount is reimbursed to the employer by being claimed as a credit on Form 941. The credit is claimed on line 12a of the January 2009 revision of Form 941. In addition, the Form 941 filer also



**needs to include the number of individuals provided the COBRA subsidy on line 12b. The new Form 941 for the quarter ended March 31, 2009 must be filed by April 30, 2009. No extensions are available for filing of employment tax returns.**

**No additional information relating to the COBRA subsidy is submitted with the Form 941, either electronically or in paper form. However, employers claiming the credit must maintain supporting documentation for the credit claim, including proof of payment of the eligible individuals' 35% share of the premium and the employer's timely payment of the full premium to the insurance carrier required under COBRA; attestation of involuntary termination for each covered employee, including the date of termination for each covered employee; and proof of each individual's eligibility for COBRA coverage at any time during the period from September 1, 2008 to December 31, 2009, and election of COBRA coverage.**

**Please contact us if you have questions or need further assistance.**