



## **Legislative Alert:**

### **COBRA Undergoes Major Changes due to the 2009 Economic Stimulus Package**

The American Recovery and Reinvestment Act of 2009 (ARRA) signed into law by President Obama on February 17, 2009 includes several important provisions affecting the workplace. The one provision relative to employees who are involuntarily terminated will have the most direct impact on almost every employer, as it explains how they will be able to continue their benefits through the Consolidated Omnibus Budget Reconciliation Act (COBRA).

The provisions of this new law offer two key benefits to employees who were terminated any time after September 1, 2008 and before December 31, 2009: a 65 percent subsidy of COBRA payments for up to nine (9) months and the ability to now elect COBRA if the election period has lapsed or select a lower level of coverage if the plan offers this option. See the following information about the provisions, eligibility and administrative procedures related to this new law; and to review an example of how all of this might affect your organization.

#### **Overview of the New Provisions:**

- Provides a 65 percent subsidy of the group health plan COBRA premiums for nine (9) months from the date of the enactment of the law for employees and their eligible COBRA beneficiaries. The subsidy became effective February 17, 2009. ***Any premiums paid prior to this date are not eligible for the subsidy.***
- Provides a special COBRA election period for individuals who would otherwise be eligible, but did not elect COBRA continuation when it was originally offered or elected COBRA and later dropped coverage. It also allows for the selection of a lower level of coverage if the employer's plan allows such an option. However, it does not allow for affected individuals to elect COBRA coverage for periods of time prior to the enactment date.

#### **Eligibility:**

- This subsidy is only available for employees and their eligible beneficiaries who are subject to an involuntary termination between September 1, 2008 and December 31, 2009 for any reason other than gross misconduct. An employee who resigns is not eligible for these provisions. These individuals are referred to as assistance eligible individuals (AEI).

## COBRA EXAMPLE

Susan was involuntarily terminated on September 16, 2008 and lost her active employee group health plan coverage effective September 30, 2008. She was mailed an election notice, but did not elect COBRA coverage by the original 60-day deadline of November 29, 2008. Now, within 60 days of the enactment date of the ARRA law, Susan must be offered another opportunity to elect COBRA. Susan makes this election on March 17, 2009. Since the employer's group health plan offers coverage on a month-to-month basis, Susan's COBRA coverage will begin on March 1, 2009. The regular premium for Susan's COBRA coverage is \$1000 per month. Since Susan is eligible for the subsidy, she will only be responsible for paying \$350 per month in premiums beginning with the payment due on March 1, 2009. This subsidy can last up to nine (9) months (November 30, 2009). The maximum COBRA eligibility period still began on October 1, 2008 and will run through March 31, 2010.

## ADMINISTRATIVE PROCEDURES

### Employer Reimbursement and Reporting Requirements:

- The 65 percent subsidy of the COBRA Premiums will be credited to employers through payroll tax credits on quarterly Form 941 beginning with 1<sup>st</sup> Quarter 2009 due April 30th.
- Overpayments will be refunded directly to the employer by IRS. Assuming all regular payroll deposits had already been made, the refund will equal the amount of the COBRA Premium assistance payments from Line 12a of Form 941.
- Each payroll company will have different methods of complying with the new regulations. We suggest you contact your payroll company's Customer Service Department for specific reporting instructions within their system.
- Employers must reimburse or provide a credit towards future premium payments for COBRA participants who have already paid the full premium for periods of coverage that occur after the effective date of the act.

### Notification Requirements:

- Employers must notify any employees who separated from employment after September 1, 2008 and either elected coverage between September 1, 2008 and the date of enactment (February 17, 2009) or who are eligible to do so during this special enrollment period of the availability of premium reductions with the option to enroll in different plan coverage if available from the employer.
  - Notice must be issued within sixty (60) days (by April 18<sup>th</sup>).
  - This notice must be provided to all individuals who have a qualifying event during this time, regardless of the qualifying event, to notify them if they qualify or not.

**Notification Requirements: (cont.)**

- As of March 19, 2009, the Department of Labor has developed model notices that can assist organizations in satisfying the notification requirements.
- AEIs will have a second, 60-day COBRA election period.

**Eligibility End Date:**

Eligibility will end if any of the following circumstances apply:

- Nine (9) months after the subsidy first becomes available to the AEI
- Expiration of the maximum coverage period under current COBRA regulations (18 months total).
- Date on which the AEI becomes eligible for coverage under another group health plan or Medicare.
- Failure to pay premiums; AEIs receiving the subsidy are subject to the same timing and procedures for paying their portion of the COBRA premium each month.

**Next Steps:**

What can employers do right now to prepare for the new requirements?

- Begin gathering information on individuals that terminated employment any time after September 1, 2008 to determine eligibility.
- Review the levels of your current health plans. If you do not offer an alternative coverage and are due for renewal during 2009, you may want to consider offering alternative coverage options.
- Develop a procedure to track qualified beneficiaries who will receive the subsidy to comply with the proper reporting requirements to the IRS.
- Develop a process to collect waivers from individuals who may be affected by the income limitations.
- Provide new General COBRA Notices for qualified beneficiaries, not just covered employees, who experienced a qualifying event any time from September 1, 2008 through December 31, 2009, regardless of the type of qualifying event.
- By April 18, 2009 - Provide a Notice in Connection with Extended Election Periods to any AEIs who:
  1. Had a qualifying event at any time from September 1, 2008 through February 16, 2009; and
  2. Either did not elect COBRA, or who elected it but subsequently discontinued COBRA

PROXUS is available to assist you with any portion of this process. Contact us at **215-654-9140** or visit us online at: [www.proxushr.com](http://www.proxushr.com).

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414 Commerce Drive  
Suite 120  
Fort Washington, PA 19034

215.654.9140 (m)  
215.654.9190 (f)  
[www.proxushr.com](http://www.proxushr.com)