



ALERT

COBRA Health Insurance Continuation Subsidy *What Employers Need to Know*

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The American Recovery and Reinvestment Act of 2009 (better known as the “Stimulus Bill”) which was signed into law by President Obama on February 17, 2009 includes a nine-month 65% federal subsidy of COBRA premiums for qualified individuals and an expansion of health care coverage continuation rights for individuals involuntarily terminated between September 1, 2008 and December 31, 2009. The effective date of this portion of the Stimulus Bill, referred to herein as the COBRA Subsidy, is March 1, 2009, but applies to any full or short period of coverage after February 17, 2009, when the law was signed.

Overview of the COBRA Subsidy

- **COBRA Subsidy** – Employers are required to provide eligible individuals with a subsidy of 65% of the cost of COBRA continuation coverage for a period of nine months from the eligible individual’s date of coverage as defined in this COBRA Subsidy. Once the eligible individual pays 35% of the COBRA premium, the employer (or the multiemployer group health plan) must pay the remaining 65% of the premium. The premiums paid by the employer will be reimbursed through a payroll tax credit taken on the Form 941 filed for the period during which the subsidized premiums are paid. Employers must also file reports with the IRS that attest to the involuntary termination of the covered employee, identify the payroll tax credit taken for the reporting period and an estimate for the next period, and identify covered employees and the subsidy amounts for each.
- **Eligibility** – any individual who became or becomes eligible for COBRA continuation coverage during the period September 1, 2008 through December 31, 2009; provided the qualifying event consists of the involuntary termination of the covered employee’s employment during this time period. Eligible individual includes the covered employee and his or her qualified beneficiaries.¹

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- **Employer Notification** – no later than April 18, 2009 (60 days from the date the law was signed), employers must provide all eligible individuals notice of the COBRA Subsidy. The notice will inform eligible individuals who currently receive COBRA continuation coverage of their right to receive the COBRA Subsidy commencing March 1, 2009. In addition, the notice will inform eligible individuals who do not currently receive COBRA continuation coverage of their right to elect such coverage under the extended election period. The Department of Labor is expected to provide model notices within 30 days.
- **Extended Election Period** – any eligible individual will have 60-days from the date the employer provides notice of the COBRA Subsidy to elect COBRA continuation coverage.
- **Coverage** – there are three distinct coverage periods under the COBRA Subsidy.
 - Any eligible individual involuntarily terminated between September 1, 2008 and February 28, 2009 who elects coverage during the extended election period will receive COBRA continuation coverage effective as of March 1, 2009. However, for purposes of determining the duration of COBRA continuation coverage, coverage is presumed to have begun on the date the eligible individual lost coverage.

For example, an individual whose employment was involuntarily terminated on September 1, 2008 is eligible for 18- months COBRA continuation coverage (coverage terminates February 28, 2010). Assuming such individual did not elect coverage at the time of termination
 - but elects coverage under the extended election period, the individual would be eligible for continuation coverage for only 12-months (coverage terminates the original termination date of February 28, 2010).
- Similarly, for individuals currently enrolled in COBRA continuation coverage, the COBRA Subsidy will commence March 1, 2009. The subsidy is not retroactive to the date coverage began.
- Any eligible individual who is terminated between March 1, 2009 and December 31, 2009, and who elects COBRA continuation coverage under the normal course will be eligible for the COBRA Subsidy on the date that COBRA coverage commences.
- **Termination of COBRA Subsidy** – the COBRA subsidy terminates on the first to occur: (1) the period ending nine-months from the date the eligible individual first receives the COBRA Subsidy (i.e., March 1, 2009 or such later date as described above), (2) the covered individual becomes eligible for other group health insurance, or for Medicare, or (3) the individual's COBRA eligibility ends under the applicable COBRA continuation coverage provision.
- **Amending Coverage Under COBRA** – if permitted by an employer and subject to certain restrictions, eligible individuals will have 90-days from the date the employer provides notice of the COBRA Subsidy to elect employer provided coverage that is different than coverage under the plan in which such individual was enrolled at the time the qualifying event occurred.

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Action Items

Employers should begin compiling a list of all employees who have been involuntarily terminated other than for gross misconduct since September 1, 2008. The list should be divided between those currently enrolled in COBRA continuation coverage and those who are not. The list should also include spouses and children covered at the time of the qualifying event. These persons will be entitled to a special election period as well. Coverage dates may need to be adjusted depending on when each person's qualifying event occurred. Plan administrators must work with their COBRA administrators to tweak their systems in order to accommodate these changes. In addition, employers should decide whether they wish to develop their own COBRA subsidy notices to employees or wait for the Department of Labor to issue model notices.

We can assist you if you have terminated employees on or after September 1, 2008, or are considering terminating employees in the near future, in order to ensure that these new COBRA notification and subsidy requirements are met.

¹ An eligible individual with modified adjusted gross income of \$125,000 or more (\$250,000 or more in the case of a joint filer) will be subject to recapture by the IRS equal to the amount of the subsidy when the individual pays tax for the year.

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