

2009 Changes to COBRA: What Employers Need to Know

(as of March 2009)

Whether you think the federal stimulus package is a great idea or a bad one, the American Recovery and Reinvestment Act of 2009 became law on February 17, 2009. Of the many changes made by the Recovery Act, employers need to be aware of new obligations the law places on them with respect to COBRA. If your business has 20 or more employees and a group health plan that was in place for 50% or more of your working days last year—meaning COBRA applies to you—please read on to see what quick actions are required on your part.

WHAT COBRA DOES

Passed in 1986, the Consolidated Omnibus Budget Reconciliation Act or “COBRA” provides former employees, their spouses, and their dependents the opportunity to keep health insurance coverage under an employer’s group health plan in the event of involuntary termination (except for gross misconduct), divorce, eligibility for Medicare, and certain other circumstances. The premiums for this on-going coverage are generally borne by the beneficiary of the coverage.

WHAT THE RECOVERY ACT CHANGES

In a nutshell, the Recovery Act provides a subsidy for 65% of the premiums for COBRA coverage for employees and their families for up to 9 months if the employee was involuntarily terminated between September 1, 2008, and December 31, 2009. The cost of this subsidy is to be initially paid by employers who may then take a credit on their federal payroll taxes.

To be eligible for the subsidy, the former employee must meet the following criteria:

1. involuntary termination (except for gross misconduct) resulting in COBRA eligibility between September 1, 2008, and December 31, 2009 (the termination could have occurred before September 1, 2008);
2. not eligible for healthcare coverage under another plan, whether with a new employer, under a spouse’s group plan, or through Medicare; and
3. election to receive COBRA coverage following termination or during the additional election period created by the Recovery Act.

Eligible former employee or families who were already receiving COBRA benefits on February 17, 2009, may pay 35% of the required premium on the next date which premiums are due and for 9 months following that date. Eligible former employees or families who elected not to receive COBRA benefits, but meet the above criteria, must be given notice of the change in the law by their former employer and allowed an additional period of 60 days to accept benefits.

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During the 9-month period of the subsidy, employers must make up the remaining 65% of the premium to the plan. Employers may then claim reimbursement in the form of reduced federal payroll taxes. The Secretary of the Treasury has been ordered to set out reporting guidelines for employers who wish to claim reimbursement subject to the minimum reporting requirements in the Recovery Act.

The subsidy is available to all eligible former employees. Persons with modified adjusted gross income over \$150,000.00 (\$250,000 if filing jointly) are subject to recapture of the subsidy in the form of an increased income tax equal to the value of the subsidy received.¹ Additionally, if a subsidy recipient becomes eligible for health care benefits under a different group plan while receiving the subsidy, they must give notice to the plan and cease receiving the subsidy (though they can maintain COBRA coverage).

WHAT YOU NEED TO KNOW

For most employers, COBRA is handled by the plan administrator of their group health plan. While the burden of handling the Recovery Act changes will also fall largely to plan administrators, employers have payment/reimbursement obligations and need to know what is required of their plan to make sure that the Recovery Act changes are carried out properly.

The biggest burden to employers will be payment of the 65% subsidized portion of the premium during the 9-month eligibility period. The Recovery Act does not provide any mechanism for the process of paying the subsidy and it will likely be left to employers and their plan administrators to resolve. Once payment is made, however, employers may then take a corresponding credit against their federal payroll taxes when filing Form 941 quarterly. Form 941 has been revised to accommodate this credit and a copy of it is available at <http://www.lrmlaw.com/pdf/IRS-Form-941.pdf>.

Next, employers (or their plan administrator) are responsible for sending out revised eligibility notices for any employees terminated after March 19, 2009. This model notice has just been released and may be obtained at <http://www.lrmlaw.com/pdf/COBRA-General-Notice-Full.doc>. Additionally, employers must send out additional election period notices to former employees terminated after September 1, 2008 who are otherwise eligible under the conditions noted above that were previously offered COBRA but have not yet accepted or who have refused COBRA coverage. A copy of the just-released additional election period model notice is at <http://www.lrmlaw.com/pdf/COBRA-Extended-Election-Notice.doc>, and must be sent by April 18, 2009. This notice will allow those employees to elect COBRA coverage for a period equal to that which they could have received if they had timely requested COBRA at the time of termination, with the first 9 months at the discounted rate.

Because the Recovery Act does not apply to COBRA benefits because of divorce, Medicare eligibility, or change in dependent status, employers only have to provide notice or notice of additional enrollment period to employees who were involuntarily terminated.

¹ A reduced rate premium reduction is available to eligible former employees and their families with modified adjusted gross income of \$145,000 (\$290,000 jointly) annually.



Looper Reed & McGraw would like to recognize attorney Michael Kelsheimer for his contributions to this Alert.

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