

IMPORTANT NOTICE!

Economic Stimulus Plan - COBRA Compliance

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The American Recovery and Reinvestment Act of 2009 was signed into law on Tuesday, February 17, 2009. This new law contains a provision that will have a significant impact on COBRA coverage. This update provides general guidance from your Employee Benefits Team at Andreini & Company to help you understand the impact on your company and employees.

The American Recovery and Reinvestment Act provides qualified COBRA participants with a 65% federal subsidy for up to 9 months of COBRA coverage for individuals who became eligible for COBRA coverage from September 1, 2008 through December 31, 2009 due to involuntary termination of employment. The bill permits these COBRA individuals to satisfy their COBRA premium by paying only 35% of the premium.

To help employers pay for this premium assistance, plan sponsors are permitted to reduce their payroll taxes to offset the lower premiums paid by qualified beneficiaries. The bill creates a new special election period for those who have not elected COBRA and a new notice requirement to inform individuals about the opportunity to elect COBRA and receive a federal subsidy. The government will create a model notice for plan sponsors to use within 30 days after the date of enactment. The Federal Government has 30 days from February 17 to issue the model notice.

The IRS and Treasury are expected to issue additional details regarding exactly how the credit process will work, including tax filing and reporting requirements, in the near future.

Who would be eligible for COBRA temporary premium assistance?

*Qualified beneficiaries that experienced an involuntary termination of employment and subsequently elected COBRA continuation coverage on or after September 1, 2008, but prior to February 17, 2009, are eligible to receive the subsidy on a go-forward basis beginning on the enactment date (February 17, 2009). **You should identify these people immediately.***

Qualified beneficiaries that experienced an involuntary termination

*between September 1, 2008 and February 17, 2009 and **did not** elect COBRA coverage during their initial 60-day election period must be provided another opportunity to elect COBRA coverage during a second 60-day election period (see Special Election Period). This second election period also applies to those individuals who elected COBRA coverage but have subsequently lost that coverage prior to the enactment date (e.g. - due to non-payment of premiums).*

Income Limitations

Individuals with modified adjusted gross income that exceeds \$250,000 (for joint return filers) or \$125,000 (for all other filers) are not eligible for the full premium subsidy. However, they may be eligible for a portion of the subsidy. Individuals earning between \$125,000 and \$145,000 (between \$250,000 and \$290,000 for joint return filers) will have their income tax increased by a percentage of their total COBRA subsidy received in that year. Individuals earning more than \$145,000 (\$290,000 for joint return filers) will have their income tax increased by the total amount of COBRA subsidy they receive.

Because any portion of a subsidy an individual receives but is not eligible for must be reported on the individual's tax return, employers and insurers may treat all qualified individuals as eligible for the subsidy regardless of income level. However, these individuals have the right to waive the subsidy and pay the full COBRA premium required. This process has yet to be determined.

Appeal Procedure

For those individuals who claim eligibility but are denied the subsidy by the plan there will be an appeal procedure provided by the Act. The appeal must go through the Dept. of Labor or Health & Human Services. A ruling on the appeal will be provided within 15 days.

When would the temporary premium assistance end?

COBRA premium assistance would end on the first date that an individual is eligible for coverage under any group health plan or Medicare. Coverage under any group health plan does not include coverage consisting of only dental, vision, counseling, or referral services, coverage under a health reimbursement arrangement, or a health flexible spending arrangement, or coverage of treatment that is furnished in an on-site medical facility maintained by an employer and

that consists primarily of first-aid services, prevention and wellness care. COBRA qualified beneficiaries receiving premium assistance must notify the group health plan in writing when they become eligible for other coverage, or face a penalty (110% of the premium reduction).

Special COBRA Election Period:

The Act creates a special COBRA election period for individuals who did not elect COBRA during their original election period that occurred sometime on or after September 1, 2008 or are currently in their COBRA election period and have not made the COBRA election as of the enactment date. This special COBRA election period begins with the enactment date of the law and ends 60 days after the notice of availability of premium assistance is provided by the plan sponsor.

What is the effective date of COBRA coverage for former workers electing COBRA under the special COBRA election period?

According to the Act, COBRA coverage will begin on the first period of coverage beginning on or after the enactment date of the law. The Act refers to a period of coverage as a period for which premiums are charged.

Length of COBRA:

COBRA coverage will not extend beyond the COBRA period that would have been required if COBRA had been originally elected. For example: If a worker was laid off on September 1, 2008 and did not elect COBRA, this worker, if he elected COBRA under the special COBRA election period, would be entitled to COBRA for the remaining months left of the original 18-month qualifying event that occurred on September 1, 2008. COBRA coverage would not be retroactive to September 1, 2008.

New Notice Requirements:

The Act requires that a new notice must be provided by plan administrators within 60 days after the law is enacted to all workers let go since September 1, 2008 who became eligible for COBRA. The purpose of the notice is to inform these former workers of their new opportunity to elect COBRA and receive a subsidy from the federal government of 65% of the premium. (Note: Also implement a procedure for sending out notices prior to an individual's premium assistance being

exhausted)

Notice Content Requirements:

The law requires additional COBRA notice information to be given to all workers laid off from September 1, 2008 through December 31, 2009. This additional notification may be met by amendment of existing COBRA notices or by inclusion of a separate document with your already existing COBRA notice.

Flexible Spending Accounts:

COBRA premium assistance is not available for health flexible spending arrangements.

Reporting:

Plan sponsors are required to submit reports to the Treasury detailing the amount of payroll taxes offset as well as estimated offsets for subsequent reporting periods.

Premium Assistance Reimbursement:

The government subsidy is obtained through a reduction in payroll taxes. Any overstatement of the reimbursement will be treated as an underpayment of payroll taxes. The entity to whom COBRA premiums are payable is the entity entitled to the government reimbursement subsidy. In the case of a multiemployer plan, the entity entitled to the subsidy is the plan. In the case of any other group health plan, the entitled entity is the employer maintaining the plan.

Premium Subsidy Not Taxable:

The premium assistance does NOT have to be included in the gross income of the COBRA qualified beneficiary.

Creditable Coverage:

The law gives terminated workers some assistance in not triggering a 63-day break in coverage for HIPAA creditable coverage purposes. The time period beginning on the date of the qualifying event and ending with the day before the date of enactment of the Act will be disregarded for purposes of determining the 63-day break in coverage.

For more information contact someone from your Andreini & Company Employee Benefits Team or log on to:

<http://www.dol.gov/dol/topic/health-plans/cobra.htm>