



AMERICAN RECOVERY AND REINVESTMENT ACT CHANGES COBRA (1)

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) that contained measures to make COBRA continuation coverage more affordable for persons who have lost their job. The major provisions are summarized below.

employer COBRA continuation premium subsidy

- Mandatory 65% employer subsidy of COBRA premiums.
- Applies to all COBRA-eligible coverages, but not to premiums for a medical FSA.
- COBRA qualifying event must be a loss of group health plan coverage on account of an involuntary termination of the covered employee's employment (excluding gross misconduct).
- Based on language of the ARRA, if laid-off/furloughed, but still an employee, person is not eligible for premium subsidy.
- COBRA qualifying event must occur during the period beginning September 1, 2008 and ending December 31, 2009.
- Would apply to COBRA continuation AND comparable state-mandated coverage.
- Employer subsidy goes into effect the first coverage period after February 17, 2009, generally March 1, 2009.
- No "reach-back" subsidy payable for coverage prior to February 17, 2009, subsidy available only going forward.

end of subsidy eligibility

- Subsidy eligibility would end the first month beginning on or after the earlier of :
 - (1) the date which is 9 months after the first day of the first month for which the subsidy applies,
 - (2) the end of the maximum required period of continuation coverage for the qualified beneficiary under the Code's COBRA rules or the relevant state or federal law (or regulation),
 - (3) the date that the assistance eligible individual (AEI) becomes eligible for other group health plan or Medicare benefits, or
 - (4) the date the AEI fails to pay his or her 35% share of COBRA premium within the grace period.
- AEIs who fail to notify a former employer that they are eligible for coverage under a new group plan are subject to a penalty equal to 110% of their premium subsidy.
- Eligibility for coverage that is only dental, vision, counseling, or referral services does not end subsidy eligibility for group medical coverage.

subsidy income threshold

- Subsidy not taxable to AEI unless individual income exceeds threshold.
- Phased-in for individuals with an annual income of \$125,000 (\$250,000 for joint filers).
- Based on AEI income during tax year in which subsidy was paid.
- High income individuals may avoid income recapture of the subsidy by waiving the subsidy payment.
- Whether or not the subsidy is taxable to the AEI is determined when the AEI files his or her individual income tax return and is not calculated by the employer.

special election period

- Special 60 day election period applies to qualified beneficiaries who are eligible for the premium subsidy and who have not elected COBRA continuation coverage prior to February 17, 2009, or allowed their coverage to lapse.
- Special election period does not extend the period of COBRA continuation coverage beyond the original maximum required period.
- Employers may allow AEIs to choose lower cost medical option. If employers permit this option, the special election period is extended from 60 to 90 days.

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notice requirements

- Department of Labor is expected to release new model notices by March 19, 2009.
- Employers must send out notices by April 18, 2009.
- Notice must disclose:
 - Availability of subsidy,
 - Any forms necessary to establish eligibility for subsidy,
 - Option to enroll in lower cost coverage (if offered),
 - Contact information for plan administrator,
 - Extended election period for persons who were eligible prior to ARRA enactment, and
 - Qualified Beneficiaries' obligation to notify plan of subsequent eligibility for group health coverage.

employer subsidy reimbursement

- Employers will be reimbursed for the 65% COBRA subsidy by taking a credit against their federal income tax withholding and employer and employee FICA contributions.
- Employers can only be reimbursed for subsidy after AEIs pay their 35% premium portion.
- Subsidy owed in excess of employer federal income tax withholding and FICA liability will be reimbursed by the Secretary of the Treasury directly to the employer.

employer reporting requirement

- Subject to final rules that are being drafted to supply further details, employers will be required to report the following information to the Treasury Department in connection with their subsidy reimbursements.
 - Attest to the involuntary termination of employment for each AEI for whom reimbursement is being claimed.
 - Report the amount of payroll taxes being offset for the reporting period and the estimated offsets of such taxes for the subsequent reporting period in connection with reimbursements.
 - Report Taxpayer Identification Numbers of all AEIs, the amount of subsidy reimbursed with respect to each AEI and any qualified beneficiaries.

employer action steps

- Identify employees who have had their employment relationship involuntarily terminated since September 1, 2008. Separate out those who were terminated for "gross misconduct".
- Review policies regarding whether an employment relationship exists following layoffs/furloughs.
- Verify that insurers and stop loss carriers will comply with the new legislation.
- Consider whether a subsidy will be provided for COBRA-like continuation involving domestic partners. Government subsidy reimbursement would not be available for domestic partner COBRA-like continuation.
- Develop appropriate internal procedures to track and report subsidy.
- Contact payroll department or payroll vendor to coordinate payroll tax credit/offset.
- Update COBRA notices or contact COBRA administrator if COBRA is outsourced.
- Send out notices no later than April 18, 2009.
- Track COBRA premiums paid after ARRA effective date. Eligible employees are entitled to refunds or credits if subsidy cannot be implemented within the first two billing cycles following the ARRA effective date of February 17, 2009 (typically March and April for monthly billers).

While the new COBRA rules went into effect February 17, 2009, with subsidies generally payable after March 1st, a number of important issues remain unresolved and will be subject to final rules that must be drafted by the government. Given the ability of an employer to provide retroactive refunds or credits to former employees who made full COBRA continuation payments, it may be prudent for employers to wait until the new final rules are issued by the government and the new model notices are distributed before implementing COBRA subsidies. Model notices are to be released by Department of Labor by March 19, 2009, which would still allow employers to act by the April 18, 2009, notice deadline.

Questions?

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