

COBRA Premiums Subsidized Under The American Recovery and Reinvestment Act of 2009

President Obama recently signed into law the American Recovery and Reinvestment Act of 2009 (ARRA), which provides for a nine month subsidy of COBRA premiums for employees who are involuntarily terminated.

Who is eligible?

The subsidy is available to individuals who were involuntarily terminated from employment between September 1, 2008 and December 31, 2009 and extends to spouses and dependents who are qualified beneficiaries.

What is the federal subsidy?

Eligible individuals will only be required to pay 35% of the COBRA premium for coverage under a prior employer's health plan instead of the full amount. Depending on how the plan is funded, the employer or health plan (payor) pays the remaining 65% of the premium. The payor is reimbursed for its payment of 65% of the premium by taking a credit for those premiums against its payroll taxes to the federal government for current employees. If the credit is insufficient to cover the payor's COBRA expense, then the remainder is reimbursed directly from the Treasury Department.

How do employers apply for the reimbursement?

Because the federal COBRA premium subsidy is reimbursed to employers through the federal quarterly payroll tax reporting system, the Act requires employers to advance the premium subsidies until the employer's payments can be recouped through reduced federal payroll tax payments. Employers will have to determine the total amount of the subsidy with respect to premiums received during the federal payroll tax reporting period from assistance eligible individuals that have elected COBRA continuation coverage. The employer may use this amount as an offset to its federal payroll tax liability. For purposes of the Act, "payroll taxes" includes amounts to be withheld for federal income tax and the employer and employee portions of FICA, Social Security and Medicare taxes.

To the extent that such amount exceeds the amount of the employer's liability for these federal payroll taxes, the Internal Revenue Service will reimburse the employer for the excess directly. If an employer claims too much in reimbursement, it will be treated as an underpayment of federal payroll taxes to be assessed and collected accordingly.

In addition to expected modifications to current payroll tax reporting forms, the Act requires additional information be provided by employers seeking reimbursement of subsidy payments, such as attestations that terminations of employment were involuntary and the levels of coverage individuals are receiving.

How is the subsidy amount reimbursed to employers?

The COBRA subsidy amount is reimbursed by being claimed as a credit on the Form 941. The form has been revised to allow for this credit. Form 941, Employer's Quarterly Federal Tax Return, will also be sent to about 2 million employers in mid-March. The form is used to claim the new COBRA premium assistance payments credit, beginning with the first quarter of 2009.

Will the COBRA premium subsidy be taxable income for the individual?

The premium subsidy is not included in the individual's income. However, there is a phase-out of eligibility for the subsidy, which will increase some high-income individuals' tax liability if they receive the subsidy. The phase-out impacts individuals whose modified adjusted gross income exceeds \$125,000, \$250,000 for those filing joint returns. Tax liability is increased, to achieve repayment of a portion of the subsidy, for those taxpayers whose modified adjusted gross income is between \$125,000 and \$145,000, or \$250,000 and \$290,000 for those filing joint returns. If a taxpayer's modified adjusted gross income exceeds \$145,000, \$290,000 for those filing joint returns, the full amount of the subsidy must be repaid as an additional tax. There is no additional tax for individuals with modified adjusted gross income less than these income levels.

What are the notice requirements for employers?

Employers will need to amend their current COBRA election notices temporarily to include general information about the availability of the premium subsidy and, if applicable, the option to enroll in different coverage. Specifically, the notices must include:

1. The forms necessary for establishing eligibility for the premium subsidy;
2. Contact information of the plan administrator and any other person with information regarding the premium subsidy;
3. A description of the extended election opportunity for those who previously declined COBRA continuation coverage;
4. A description of an assistance eligible individual's obligation to notify the plan when he or she becomes eligible for coverage that would cause eligibility for the subsidy to cease and the penalty for the failure to do so;
5. A prominent description of the qualified beneficiary's right to the COBRA subsidy and any conditions on such right; and
6. A description of the option to enroll in different coverage under the health plan, if applicable.

This information must be included in the COBRA election notices provided to persons who become eligible for COBRA continuation coverage after enactment of the Act. For assistance eligible individuals who became eligible for COBRA continuation coverage prior to enactment of the Act, a similar notice must be provided within 60 days of enactment of the Act. The Act directs the Department of Labor to issue model notices within 30 days after enactment of the Act.

What Should You Do Now?

There are many details that will need to be filled in through further guidance from the Internal Revenue Service and the Department of Labor. In the meantime, I suggest that employers begin taking the following steps:

- Compile a list of all assistance eligible individuals who will need to be notified, which generally includes all former employees who were involuntarily terminated on or after September 1, 2008 and any eligible spouses and dependents who were enrolled in coverage prior to the termination;
- Revise payroll systems to identify eligible individuals in order to report the tax credit to the government and receive the subsidy;
- If a plan is insured, check with the insurance carrier to determine the appropriate procedures for enrolling assistance eligible individuals who are not currently enrolled in COBRA continuation coverage;
- If a plan is self-insured, review stop-loss contracts to determine whether coverage applies to assistance-eligible individuals who are not currently enrolled in COBRA continuation coverage; and
- Modify applicable COBRA premium billings for March 2009 coverage to take into account the 65% subsidy.

Contact Us

If you have questions or require up to date information regarding the federal COBRA premium subsidy, please contact Nikayela D. Lockett, The Williams Firm, P.C., *via* e-mail nlockett@thewilliamsfirm.com, or telephone (810) 695-7777.

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