

NOTES

PRACTICE

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Stimulus Package Changes COBRA Procedures

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The enactment into law on February 17 of HR 1, The American Recovery and Reinvestment Act of 2009 (ARRA), provides for significant temporary COBRA premium reductions for eligible employees and imposes new notice requirements on employers. The Act became effective March 1, 2009.

HR 1 establishes a 65% government subsidy for eligible workers towards their COBRA coverage for up to nine (9) months. The Treasury Department will administer the subsidy, providing employers or health plans with a credit against payroll taxes for the cost of the subsidy. Employees who were involuntarily terminated between September 1, 2008, and December 31, 2009, with annual income less than \$125,000 (single) or \$250,000 (couples) are eligible. Additionally, the employee, not the employer, will be responsible for abiding by the salary cap that determines eligibility. Should an employee accept COBRA coverage when they are ineligible, they will have to remit the subsidy to the federal government through their tax returns.

Hence, under the new law, eligible former employees, enrolled in their employer's health plan at the time they lost their jobs, are required to pay only 35 percent of the cost of COBRA coverage. Employers must treat the 35 percent payment by eligible former employees as full payment, but the employers are entitled to a credit for the other 65 percent of the COBRA cost on their payroll tax return.

Qualified individuals who initially declined COBRA coverage have an additional 60 days after they receive notice of the special election period to receive the subsidy. Should an employee subsequently elect coverage, the effective date of coverage would begin March 31, 2009.

Employers must amend their COBRA Election Forms to include information on the premium reduction for future qualifying COBRA events. In addition, supplemental notices must be given no later than April 17, 2009, to all former employees (and their qualified beneficiaries) who have been involuntarily terminated since September 1, 2008, informing them of the opportunity for a premium reduction.

Employers must maintain supporting documentation for the credit claimed. This includes documentation of receipt of the employee's 35 percent share of the premium. In the case of insured plans, this includes a copy of an invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier, as well as a declaration of the former employee's involuntary termination.

The Employer's Quarterly Federal Tax Return (Form 941) has been modified to allow employers to claim the new COBRA premium assistance payments credit, beginning with the first quarter of 2009.

The new COBRA subsidy provisions also apply to insurers required to offer continuation coverage under state law similar to the federal COBRA. This is generally an employer with less than the 20 employees, as required of COBRA.

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