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Stimulus Act Changes to COBRA Coverage

Summary

Congress recently approved an economic stimulus package that was signed by the President on February 17, 2009. The American Recovery and Reinvestment Act (ARRA) makes a number of changes affecting employee benefits, most notably the expansion of COBRA, including any state continuation laws applicable to employers with fewer than 20 employees. The new COBRA rules create a 9-month, 65% federal subsidy of COBRA premiums for certain covered employees who were or will be involuntarily terminated during the period of September 1, 2008 to December 31, 2009.

The Subsidy – How it Works

An employer can only require an eligible individual to pay 35% of the COBRA premium. The federal government will reimburse employers for the remaining 65% by allowing the employer to take a refundable credit toward payroll taxes. The subsidy will apply with the premium payment for the first period of coverage beginning March 1, 2009, and will last for up to nine months of coverage.

Eligible Individuals

To be eligible for the subsidy, an employee must be terminated, or have been terminated, during the period starting September 1, 2008 and ending December 31, 2009. Employees must have been terminated involuntarily and not for reasons of gross misconduct. Qualifying dependents may also be eligible. An individual will not be eligible for the subsidy once s/he becomes eligible for coverage under another group health plan or Medicare or otherwise is no longer eligible for COBRA. Individuals must notify the employer when they become eligible for other health benefits or face penalties for failing to do so. Certain highly compensated individuals will not be entitled to the subsidy.

New Election Period

Employers must offer an additional COBRA election period to any person who was involuntarily terminated on or after September 1, 2008 and were entitled to COBRA coverage, whether that person originally declined COBRA or elected but subsequently terminated COBRA. The new election period begins on March 1, 2009, and ends 60 days after the date the employer provides the required notice. Coverage is **not** retroactive to the date the individual originally lost coverage.

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What Employers Should Do Next

Individuals affected by the new law must be notified, among other things, of the availability of the subsidy and a description of the extended election period.

1. Identify employees eligible for COBRA who were involuntarily terminated on or after September 1, 2008 and their eligible dependents.
2. Revise and update COBRA communications materials to provide the new information regarding the subsidy. You may choose to revise your current notice or include the new information as a separate document.
3. Notify eligible individuals who became eligible for COBRA prior to February 17, 2009 of their new COBRA election period and the availability of the subsidy. These notices must be sent out by April 16, 2009.

IMPORTANT NOTE: The government is required to issue a model notice for employers to provide to employees by March 19, 2009. Therefore, plans may have time to wait for the model notice and still meet the deadlines required by the law. However, the subsidy will apply beginning with the first premium payment period after enactment, i.e. March 1, 2009. During the transition period, the law allows employers to continue to require beneficiaries to pay the full COBRA premium for the first two months (March and April). The employer may decide either to reimburse the beneficiary for the overpayment or credit the overpayment toward future premium payments.

4. Coordinate with payroll and systems staff to make necessary changes to ensure that the employer is paying the government's 65% share of the premium.
5. Take steps and keep all records necessary to ensure reimbursement or credit. Employers will be able to recover the balance paid by reducing their employment tax deposits (i.e., for federal income taxes, Social Security and Medicare) and reporting these offsets on a revised Form 941, which the IRS is currently revising. If the amount of the employer subsidy is greater than the payroll tax liability for that period, the additional amount due will be treated as a refund or a credit. Other reporting requirements will be identified by the Treasury Department in the near future.

Where May I Obtain Additional Information?

Once the government produces the model notice, we will put a link to it on our Web site:

<http://www.federatedinsurance.com/ws/fi/index.htm>

You may also find information on the government Web site:

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

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