



Corporate Advisory

February 18, 2009

Employers Required to Front COBRA Costs Beginning March 1, 2009

Yesterday, the President signed The American Recovery and Reinvestment Act of 2009 (the "Stimulus Act") into law. If you sponsor a group health plan, you must act quickly to implement the new requirements by March 1, 2009 (or earlier where coverage terminates before the end of the month, e.g., on date of termination of employment). The Stimulus Act mandates that you pay 65% of the monthly continuation coverage premiums for your involuntarily terminated employees who elect continuation coverage, for up to nine months. You will then be repaid this money in the form of employment tax credits.

What type of continuation coverage must I subsidize?

Beginning with premiums due for coverage on or after February 17, 2009, you must subsidize both the cost of COBRA continuation coverage and state-mandated health continuation coverage (collectively referred to in this alert as "COBRA") elected by the Eligible Individual (as defined below). Most states mandate health continuation coverage, regardless of size. To see if you are subject to state mandates, please click [here](#).

You are not required to subsidize continuation coverage for any costs related to COBRA coverage for periods prior to February 17, 2009 or for health flexible spending accounts at any time.

You may (but are not required to) allow an Eligible Individual to elect a lower cost coverage option upon termination. The subsidy will cease at the earlier of nine months, the Eligible Individual's eligibility for other employer health coverage or Medicare, or the end of the Eligible Individual's maximum COBRA coverage period.

Who is eligible for the subsidy?

Eligible Individuals include:

- any employee who is involuntarily terminated between September 1, 2008 and December 31, 2009 (employees terminated for gross misconduct or voluntarily terminating are not eligible); and
- the employee's spouse and dependents.

CONTACTS

This is only a summary of portions of the Stimulus Act. For more information about the subsidized premiums for continuation coverage and assistance in revising your forms, please contact any of the attorneys working with the Employee Benefits & Executive Compensation Group at McKenna Long & Aldridge LLP:

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How do I pay the subsidy?

You will pay the 65% subsidized monthly premium for COBRA coverage directly to the provider (or if you are self-insured, to the plan). You will then receive a credit for the subsidy amounts against your employment tax liabilities, including federal income tax withholding and FICA. If you are unable to recover the full subsidy with credits, you may apply for a direct payment from the federal government.

If the Eligible Individual does not pay the full cost of COBRA coverage because you pay for a portion of the premium for reasons other than the Stimulus Act (such as pursuant to a severance agreement or administrative practice), then you can only claim a pro rata portion of the 65% subsidized premium as a tax credit for the subsidy.

What must I do now?

You should take the following actions now:

- Decide if you will allow individuals to elect a lower cost coverage option for the COBRA period, as permitted under the Stimulus Act.
- Decide whether you will credit the subsidized portion of transition period premiums against future premium payments within 180 days or refund the subsidized portion within 60 days of the receipt of the premium payment. The transition period premiums are those paid for coverage between March 1, 2009 and May 1, 2009 (or earlier if coverage terminates before the end of a month).
- Revise your administrative procedures for COBRA coverage to reflect your choices above and the subsidized premiums.
- Revise and draft your new COBRA notices and election forms to reflect your choices above and the subsidized premiums.
- Review and amend your group health plans and summary plan descriptions, if they contain COBRA information.
- Identify employees whose employment was involuntarily terminated on or after September 1, 2008 and who were enrolled in your group health plan on their termination date. Compile last known mailing addresses for Eligible Individuals.
- Mail notices of subsidized premium amounts to those Eligible Individuals who are currently receiving COBRA coverage.
- Mail special election notices and forms to those Eligible Individuals who are not currently receiving COBRA coverage (either because they never elected it or they have stopped paying premiums).
- Calculate and pay your monthly COBRA premium subsidy (prorated in some cases).
- Review your severance plans and policies to determine whether any employer-paid COBRA coverage should be revised so that you can claim the maximum tax credits.
- Revise payroll and accounting procedures to reflect and take advantage of the tax credits.
- Keep accurate records because the Treasury Department is expected to issue guidance requiring you to file reports.

DEADLINES	
Deadline	Action
March 1, 2009 (or earlier for plans that terminate coverage before the end of the month)	Begin using new COBRA election notices and forms with specific information about the subsidy and, if you permit, the option to enroll in different coverage. <i>**Model language from the DOL is expected by March 18, 2009.</i>
April 18, 2009	Deadline to mail special election notices to Eligible Individuals not currently on COBRA. These individuals will have 60 days from the date of the notice to elect COBRA continuation coverage.

April 18, 2009	Deadline to mail notice to Eligible Individuals who are currently receiving COBRA continuation coverage of the subsidy.
April 30, 2009 (or earlier for plans that terminate coverage before the end of the month)	Last day of the transition period during which you can charge the full premium for COBRA coverage and either credit the subsidized portion against future premium payments within 180 days or refund the subsidized portion within 60 days of receipt of premium payment.

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