

The American Recovery and Reinvestment Act of 2009 Temporary COBRA Subsidy

Overview

The American Recovery and Reinvestment Act of 2009 was signed into law by President Barack Obama on February 17, 2009. The Act includes a temporary federal subsidy to cover 65% of the cost of COBRA coverage for eligible individuals. The subsidy is scheduled to become effective for coverage beginning March 1, 2009.

Qualifying Event for COBRA Premium Subsidy

An eligible participant's loss of health coverage must be due to involuntary loss of employment between September 1, 2008, and December 31, 2009. Eligible family members are also eligible for the subsidy if they lose health insurance coverage due to the employee's involuntary termination.

Amount of Subsidy

The subsidy is 65% of the COBRA premium charged to the participant from and after March 1, 2009. Since it is unlikely that the Department of Labor or the IRS will issue guidance by this date, employers may charge eligible participants the full COBRA premium for March and April. If the employer chooses to do this, the employer must pay the amount of the subsidy to the eligible participant within 60 days or provide the participant with a credit against future premiums as long as it is reasonable to believe that the credit will be used within 180 days of the date of overpayment.

Duration of Subsidized COBRA Coverage

The maximum period of subsidized COBRA coverage is nine months. The subsidy ends when the eligible participant becomes eligible for employer-sponsored health coverage or Medicare or when the normal 18-month COBRA period expires, whichever is earliest. Eligible participants must notify the health plan when they become eligible under another employer-sponsored health plan or Medicare.

Special Election Period

Workers who were involuntarily terminated between September 1, 2008, and February 17, 2009, but failed to initially elect COBRA, have an additional 60 days from receipt of the COBRA subsidy notice to elect COBRA and receive the subsidy. Within 60 days of the enactment of the Act, employers must notify all qualified beneficiaries who incurred a qualifying event between September 1, 2008, and February 17, 2009, of the availability of the COBRA subsidy and the opportunity to enroll in COBRA.

Effective Date

The new subsidy becomes effective for coverage beginning March 1, 2009. Eligible participants who have already elected COBRA are entitled to a reduction in premiums effective as of March 1, 2009.

Payroll Tax Credit

The subsidy is initially paid for by the employer, who may then claim the subsidy amount as a credit against federal tax withholdings and payroll taxes. Employers may claim tax credits against periodic deposits for wage withholdings and FICA payroll taxes for the amount of COBRA subsidy payments. If the employer's claims for COBRA subsidy payments exceed the amount of wage withholdings or FICA payroll taxes reported by the employer, the IRS is required to reimburse the employer directly for the excess amount.

High-Income Individuals Ineligible for Subsidy

The subsidy is adjusted on income. Joint filers with \$250,000 or more of modified adjusted gross income and all other filers with \$125,000 or more of modified adjusted gross income are not eligible for the subsidy. High-income individuals may waive the subsidy. Employers are not required to determine whether their terminated employees' income makes them eligible for the subsidy and can treat all involuntarily terminated employees as eligible for the subsidy.

Option to Change Coverage

An eligible participant may elect to change coverage under the health plan if such a change is permitted by the employer and the premium for the different coverage does not exceed the premium for coverage under the plan in which the participant was enrolled at the time the qualifying event occurred. The election has to be made within 90 days of the COBRA notice.

Notices

Employers should work with their insurance carriers to modify their COBRA notices. The notices should inform eligible participants of the availability of the COBRA subsidy and the option to enroll in different coverage during the COBRA period if permitted by the employer. The notice must also describe the obligation of the eligible participant to notify the plan about subsequent eligibility for coverage under another employer-sponsored health plan or Medicare and the penalty for failure to do so. (A penalty tax may be issued to participants equal to 110% of the premium subsidy.) Failure for employers to provide notices would be a COBRA violation and subject to the standard COBRA penalties of up to \$110 a day under ERISA. Additionally, there could be adverse tax consequences under the Internal Revenue Code, which can impose excise taxes of \$100 per day per notice on the plan administrator.