

New Benefits for Employees

COBRA Premium Assistance Now the Law

March 2, 2009 by Phyllis C. Katz, Timothy A. Singh

What Happened and When?

On February 17, 2009, the American Recovery and Reinvestment Act became law. Among its provisions was the Premium Assistance for COBRA Benefits which provides eligible individuals with a subsidy of 65% of the premium costs if they elect Continuation Coverage under COBRA. The Act also provides a similar subsidy for small employer plans and other plans which are required to provide continuation coverage under state law.

Who Is Eligible for Premium Assistance?

Employees who were involuntarily terminated between September 1, 2008 and December 31, 2009 are entitled to a 65% COBRA premium subsidy for a period of up to nine months. The employee or any other covered individual under the employee's health plan may elect coverage.

Certain employees are not eligible: (1) those whose employment was terminated for gross misconduct; (2) those whose adjusted gross income (with certain adjustments) is over \$125,000 (\$250,000 if a jointly filed tax return); and (3) those who are eligible for Medicare or another health plan (e.g. coverage under a spouse's plan or under another employer's plan). Employee's whose adjusted gross income is between \$125,000 and \$145,000 (\$250,000 and \$290,000 for joint filers) will receive premium assistance but at a diminishing amount; employees with adjusted gross incomes above these limits receive no premium assistance.

How Does the Subsidy Work?

The individual submits 35% of the premium costs to the employer; when the check from the employee is received, the employer covers the remainder by making a payment in full to the health plan. To the extent that the employer has income tax withholdings from wages or FICA taxes with respect to its employees, the employer then requests reimbursement from the federal government in the form of a credit against these taxes or, if payroll taxes are inapplicable or insufficient, the employer will be reimburse for the premiums paid by the U.S. Treasury Department. There are reporting requirements for the employer including an attestation that the employee was involuntarily terminated. The reports are required to be filed at the same time as the deposits of payroll taxes are to be made.

How Long Does the Subsidy Last?

The subsidy terminates at the end of nine months or whenever the covered individual becomes eligible for other group health insurance, Medicare or if COBRA eligibility ends.

Extended Election Period

Employees who were involuntarily terminated between September 1, 2008 and December 31, 2009 and did not elect COBRA coverage may now wish to do so due to the subsidy. To remedy this situation, all former employees are provided with a 60-day period from the date that they are provided notice to choose subsidized COBRA coverage. The employer is responsible for contacting former employees and notifying them of the available subsidized coverage. This coverage will only extend back to February 17, 2009, the enactment date, rather than the date the employee was terminated. In addition, the extended election period does not serve to extend the

original COBRA coverage period which begins on the date the qualified beneficiary lost coverage (this means that the COBRA coverage may not last the full 18 months).

Similarly, former employees who had opted for COBRA coverage but are currently paying the unsubsidized amount must be contacted and informed of the subsidy. These individuals must be either reimbursed for the premiums paid after February 17, 2009 or have a credit applied against their future premium payments.

Employer Requirements

Employers are required to notify individuals of the available subsidy. Model notices have not yet been released but will be available within 30 days of the enactment date (March 19, 2009). Employers will be required to provide individuals with the following:

- forms necessary for establishing eligibility
- the contact information for the plan administrator
- notice of the extended election period
- a description of the individual's obligation to notify the plan when he becomes eligible for other coverage
- a description of the individual's right to the subsidy and any applicable conditions
- a description of the option to enroll in different coverage under the health plan if applicable

Special Assistance Provided

The U.S. Department of Labor has useful information on its webpage, www.dol.gov under its Employee Benefits Security Administration ("EBSA") section. There is a toll-free number to

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call, 1-866.444.3272, with a benefits administrator available to advise. The webpage allows the employer to subscribe to the webpage for updates as they are issued and to receive forms when they are published. During this period, an employer should be working with the health plans to determine who will be responsible for sending out the notice (the employer is ultimately responsible and can not delegate or waive its responsibilities). During this period, the employer can begin developing the list of employees who have been involuntarily terminated since September 1, 2008 and updating the contact information.

If you have any questions about the new law, please contact the attorney at Sands Anderson Marks & Miller with whom you usually work, or Phyllis Katz (pkatz@sandsanderson.com) or Tim Singh (tsingh@sandsanderson.com); other employment attorneys are also available to answer your questions are available to assist you at well. You can reach the attorneys by calling 1-800-289-1636.