

COBRA Subsidies During the Economic Crisis

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In response to the economic crisis the federal government has, through the American Recovery and Reinvestment Act of 2009, implemented some special, temporary benefits that are intended to assist the involuntarily unemployed in paying for continued health insurance. For a period of up to nine months, the federal government now subsidizes 65 percent of the COBRA premiums that eligible workers would otherwise pay for continued health insurance for themselves and their families. Eligible workers must contribute 35 percent of the total premium due to receive the subsidy. The subsidized portion of the COBRA premium is paid initially by the employer which then is able to take a payroll tax credit reimbursing its cost. Eligible workers must contribute 35 percent of the premium otherwise charged to them to receive the subsidy. The subsidized portion of the COBRA premium is paid initially by the employer which then is able to take a payroll tax credit reimbursing its cost. If the employee co-pays the COBRA premium with the employer, then the employee must pay 35 percent of the employee co-payment otherwise due to receive the subsidy.

ELIGIBLE RECIPIENTS OF THE SUBSIDY

To qualify for the 65 percent premium subsidy, a worker who is otherwise regularly qualified for COBRA must have been involuntarily terminated from his or her job

between September 1, 2008 and December 31, 2009. Workers who are involuntarily terminated from small employers between September 1, 2008 and December 31, 2009 and who are covered under state "mini-COBRA" laws are also eligible for the federal subsidy. Any eligible worker who lost his or her job between September 1, 2008 and February 16, 2009, but failed to elect COBRA, has an extra 60 days after receipt of notice of the subsidy to elect COBRA and qualify for the subsidy.

The individuals eligible for the COBRA subsidy include family members of the employee covered for health insurance immediately prior to the involuntary termination of employment. The subsidy does not apply to individuals who voluntarily terminate their jobs or are eligible for other group health coverage, such as through a spouse's plan or Medicare.

TAXATION OF SUBSIDY

For qualified individuals, the COBRA subsidy is not taxable. However, the subsidy is phased out for any individual whose modified adjusted gross income exceeds \$125,000 (or \$250,000 for those filing joint returns), and a portion of the subsidy must be repaid through increased income tax. A taxpayer with modified adjusted gross income exceeding \$145,000 (or \$290,000 for those filing joint returns) does not qualify for the subsidy and any subsidy that the taxpayer does receive must be repaid through additional income tax. High-income individuals can permanently elect out of the premium subsidy.

EMPLOYER'S OBLIGATIONS

If an employer is subject to federal or state COBRA and an assistance-eligible individual elects continuation coverage and pays 35 percent of the COBRA premium, the

employer is obligated to make the remaining 65 percent premium payment for up to nine months. Employers are reimbursed for the COBRA subsidy by claiming a credit on Form 941 (relating to withholding taxes). To claim the credit, an employer must maintain supporting documentation, including the dates and amounts involved; the employer's receipt of the assistance-eligible individual's 35 percent share of the premium; a copy of the invoice from the insurer and proof of timely payment, or, in case of a self-insured plan, proof of the premium amount and coverage provided to the eligible individual; the date of the involuntary termination of the employee's employment; the covered employee's social security number; and any other documents necessary to verify the correct amount of the reimbursement.

EFFECTIVE DATE & TRANSITION RULES

The new law, which is temporary, became effective on February 17, 2009. However, under a special transition rule, the terminated employee may pay the full COBRA premium for March and April and the subsidy can be applied retroactively. Alternatively, the terminated employee may pay the full COBRA premium for March and April and have the subsidy credited against future COBRA premiums.

REQUIRED NOTICES

Employers are required to notify assistance-eligible individuals of the new COBRA subsidy if they are terminated after February 17, 2009. Employees who already terminated their employment on or after September 1, 2008 and before February 17, 2009 must receive notice of the availability of the subsidy by April 18, 2009. In addition, they must be informed of any right to choose different medical coverage (if that right is available), and be informed of the special 60-day extension of the COBRA election

period if the individual is not a COBRA participant by February 17, 2009.

The special notices announcing the COBRA subsidy must include the following information:

- The form necessary for establishing eligibility for the subsidy.
- The contact information of the plan administrator.
- A description of the extended, 60-day election period for eligible individuals who did not elect COBRA and were terminated between September 1, 2008 and February 17, 2009.
- A description of the qualified beneficiary's obligation to notify the plan of his or her later coverage under another group plan or Medicare.
- A description of the terms and conditions for the reduced premium.
- A description of the option to enroll in different coverage, if the employer permits changing coverage.
- No later than April 18, 2009 employer should notify eligible individuals terminated between September 1, 2008 and February 17, 2009 of the subsidy and the opportunity to elect different health coverage, if available. If eligible individuals are not participating in COBRA as of February 17, 2009 the employer should notify them of their extended opportunity to elect subsidized COBRA.
- Regular COBRA notices and election forms should be modified to reflect the subsidies available to workers who are involuntarily terminated on or after February 17, 2009.
- Payroll and accounting procedures should be modified to allow the employer to recoup the subsidy from the payroll tax credit.

ACTIONS THAT EMPLOYERS SHOULD TAKE:

All employers should:

- Identify persons who were involuntarily terminated between September 1, 2008 and February 17, 2009.

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Evelyn Haralampu heads Burns & Levinson's employee benefits/ERISA and executive compensation practice. She is also a member of the Tax, Corporate, Private Client and Labor, Employment and Employee Benefits Groups. Ms. Haralampu has extensive experience advising both businesses and non-profit entities. In particular, she counsels on employee benefits design, executive compensation programs, equity-based compensation, health care privacy, employment law, immigration and tax related issues. She assists employers with benefits and executive compensation issues in the context of corporate reorganizations, bankruptcies and succession planning. She also counsels individuals on benefits matters in the context of estate planning and property settlements in divorce. Ms. Haralampu represents clients before the Internal Revenue Service and U.S. Department of Labor, and counsels on ERISA controversies in the federal courts.

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