

Monday, March 23, 2009

Labor and Employment Update: Cobra Premium Assistance After the Stimulus Bill

By Erwin D. Kratz

President Barack Obama signed the economic stimulus bill into law on Tuesday February 17, 2009. The bill contains premium assistance for COBRA qualified beneficiaries who are involuntarily terminated between September 1, 2008 and December 31, 2009. Employers that sponsor group health plans need to change their COBRA administration practices to comply with the new law.

This alert summarizes the new law and what you need to do to comply. You are also invited to register for our free webinar "COBRA Premium Assistance After the Economic Stimulus Bill" on Monday, March 30, 2009. To register please click on the link below.

<http://www.fclaw.com/seminar/registration.cfm?ID=600>

Once you have successfully registered, you will receive an email confirmation with instructions for logging onto the webinar at noon MDT March 30th.

Premium Assistance

Under the new COBRA premium assistance benefit, an "Assistance Eligible Individual" pays 35% of their normal COBRA premium. The employer pays the other 65% of the premium and is entitled to reimbursement of this amount from the federal government. Assistance applies as of the first period of coverage beginning on or after February 17, 2009 (March 1, 2009 in most cases).

Eligibility

Anyone who is eligible for COBRA is eligible for the premium assistance if their COBRA qualifying event was an involuntary termination from employment between September 1, 2008 and December 31, 2009. Therefore, not all COBRA beneficiaries are eligible for assistance (such as, for example, people who voluntarily resigned.)

Extended Election Period

Individuals who are eligible for assistance and were offered COBRA after September 1, 2008 and had not elected COBRA as of February 17, 2009 get a one-time new election period starting on the date the stimulus bill is enacted and ending 60 days after the individual receives notice from the employer of the new election right.

COBRA coverage for these individuals will begin as of the first period of coverage starting after February 17, 2009 (March 1, 2009 in most cases).

Optional Plan Enrollment Change

Employers may (but are not required to) permit Assistance Eligible Individuals to enroll in a less expensive coverage option under the Plan, subject to certain restrictions.

quick links

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- ERISA and Employee Benefits Practice
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Suite 1400
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(702) 692-8000

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Nogales, AZ 85621
(520) 281-3480

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Suite 2600
Phoenix, AZ 85012
(602) 916-5000

Tucson
One S. Church Ave.
Suite 1000
Tucson, AZ 85701
(520) 879-6800

Premium Assistance Ends

Premium assistance lasts a maximum of nine months. An individual is not eligible for premium assistance once they become eligible for Medicare or another group health plan. Note, an individual who is eligible for, but does not enroll in, another group health plan, is eligible for COBRA coverage, but not for COBRA premium assistance. An individual who loses eligibility for premium assistance has a duty to notify the employer, and is subject to DOL penalties for failure to do so.

Notice Requirements

Employers are required to provide supplemental COBRA qualifying event notices to all employees and their dependents who had a COBRA qualifying event after September 1, 2008. The supplemental notice must include notice of availability of premium reduction; forms for establishing eligibility for premium reduction; a description of the obligation to notify the employer of loss of eligibility for the assistance; and notice of the option to enroll in different coverage (if elected). Notice of the extended election period must also be given to Assistance Eligible Individuals who became entitled to COBRA before February 17, 2009. Failure to provide these additional notices within 60 days will be treated as a failure to provide the initial COBRA election notice, which will extend the qualified beneficiary's election period. The new notices can be incorporated into existing COBRA notices or can be stand alone notices. Employers have until April 17, 2009 to provide these supplemental notices.

Reimbursement for Premium Assistance

Employers are reimbursed for the premium assistance by claiming a credit against their payroll taxes owed (wage withholding payments and FICA tax payments). Payroll tax is considered paid on the date the Assistance Eligible Individual's reduced COBRA premium is received. Employers will need to be careful in claiming the credit because an overstatement of the reimbursement amount will be treated as an underpayment of payroll taxes. Employers will also need to be careful to turn premium assistance off at the right time so that they do not inadvertently provide premium assistance for which they cannot be reimbursed.

Reporting Requirements

An employer entitled to reimbursement will be required to file a detailed report with the U.S. Treasury regarding reimbursement, including an attestation as to involuntary termination for each employee for whom reimbursement is claimed; the amount of payroll taxes offset for the reporting period; taxpayer identification numbers of all covered employees; the amount of subsidy reimbursed with respect to each employee; whether the subsidy reimbursement was for single coverage or coverage for 2 or more individuals; and an estimate of offsets for the subsequent reporting period. The reporting period and form of report has not been determined yet.

Department of Labor and IRS Guidance

The DOL has created a web page dedicated to the new law, which includes quick links to information, including a COBRA Premium Reduction Fact Sheet:

<http://www.dol.gov/ebsa/COBRA.html>

The DOL released the following model notices on Thursday, March 19:

1. A General COBRA Notice the DOL refers to as the "Full Version", which can be used as a base to prepare a single notice that includes the information for a general COBRA qualifying event and election notice and also the information on the new premium reduction rights under the new law.
2. A Supplemental COBRA Notice the DOL refers to as the "Abbreviated Version", which includes only the information regarding the new premium reduction rights.
3. A "Notice in Connection with Extended Election Periods", which can be modified as appropriate to notify individuals who had a COBRA qualifying event between September 1, 2008 and February 16, 2009, and either did not elect COBRA coverage or elected it but subsequently discontinued it.

Need to Know

4. An "Alternative Notice" the DOL recommends for use with small plans that are not subject to COBRA (i.e. plans of employers with less than 20 employees), but which are subject to state "mini-COBRA" laws. This will need to be modified to comply with the applicable state law.

The model notices can be downloaded from <http://www.dol.gov/ebsa/COBRAmodeInotice.html>.

Employers have until Saturday April 18, 2009 to provide the supplemental COBRA notices required under the new law to all covered employees and their qualified beneficiaries who experienced a qualifying event at any time from September 1, 2008 through February 17, 2009 and who did not have a COBRA election in place on February 17, regardless of the type of qualifying event. The model notices described above should be helpful in this regard, but they are only a guide. Employers will need to review their existing notices and COBRA practices to ensure the moving pieces are accurately reflected in the notices they use so that they do not inadvertently notify people of rights they do not have and so that the information they are required to communicate to various groups of former employees and their qualified beneficiaries is accurately conveyed.

The IRS has also dedicated a page to the new law with a link to some helpful questions and answers, including guidance on when and how to claim reimbursement for the premium assistance:

<http://www.irs.gov/newsroom/article/0,,id=204505,00.html>

[Join Our Webinar on Monday, March 30, 2009 to Learn More](#)

Join us on Monday, March 30, 2009 from 12 p.m. to 1 p.m. MDT for a free webinar to learn more about what you need to do to comply with the new COBRA premium assistance requirements, including:

- Identifying who you have terminated involuntarily since September 1, 2008
- Whether to Allow Assistance Eligible individuals to enroll in a less expensive coverage option under your Plan
- Generating and distributing the new COBRA notice and forms to establish eligibility for premium assistance
- Developing procedures to administer COBA premium assistance, including adjusting premium notices when premium assistance ends and what to do if an Assistance Eligible Individual pays 100% of the COBRA premium in March or April 2009
- How premium assistance is treated for tax purposes
- How the new election right affects the 63 day pre-existing conditions exclusion period under HIPAA.
- Developing procedures to efficiently manage your reimbursement claims
- What to do if you have former employees for whom you have already agreed to pay COBRA premiums



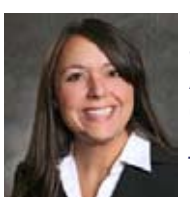
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