

## Critical COBRA Changes 03/01/09!

### The American Recovery and Reinvestment Act (Stimulus Bill)

The following is a brief, but not exclusive, overview of required COBRA changes:

- ◆ **Changes are retroactive to September 1, 2008.** Special enrollment notices need to be sent to **all** employees who terminated employment since 9/1/2008.
- ◆ **For employers whose Health plans terminate coverage at the end of the month of a qualifying event, the law is effective March 1, 2009. If coverage terminates on the date of a qualifying event, the law is effective February 18, 2009.**
- ◆ **Employer pays 65% of the premium. Qualified beneficiary pays 35%. Employer claims subsidy as a credit against payroll taxes.**
- ◆ **Allow 60 day election period for those eligible for the subsidy but never originally elected COBRA.**
- ◆ **Allows current COBRA participants to switch to any other medical option under the employer's plan.**
- ◆ **Must notify eligible beneficiaries who were terminated 9/1/2008 or later (through 12/31/2009) and inform them of the subsidy and offer them COBRA coverage, even if they did not elect COBRA initially. Determining who and how to find them may be difficult.**
- ◆ **Must prepare special notice to existing COBRA participants informing them of the new subsidy and allowing them the opportunity to change medical options.**
- ◆ **New administrative procedures (new premium structure, notices calculating subsidy for credit against employer taxes, additional mailed notifications, notification of COBRA participants of new premium, etc.)**
- ◆ **Must change existing COBRA initial notice and election notice to include new subsidy rules.**
- ◆ **Must notify current COBRA continuants of subsidy provision and provide new coupons for coverage going forward.**
- ◆ **Must update payroll systems to accommodate subsidy.**
- ◆ **Must create notice to inform COBRA participants when they reach the subsidy limit.**
- ◆ **Beneficiaries eligible for medical coverage under a new employer's plan or Medicare must inform employer and end the subsidy. Failure to do so would result in a penalty imposed on the beneficiary of 110% of the subsidy provided after eligibility ended.**

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Please feel free to talk to any of our consultants for clarification of any information provided and visit our website for details about HRS at [www.hrstndassociates.com](http://www.hrstndassociates.com)

#### Who Must Comply?

Compliance, if your company is COBRA eligible, is mandatory.

Remember, you are COBRA-compliant if you have 20 or more *full-time* equivalent employees, are not a church exempt from tax under section 501 and do not have a plan established and maintained by the Federal government

States with state COBRA continuation plans must comply.

## ***What Does This Mean for You?***

### **New notices to be created, new payroll information and tracking systems to be developed. Premiums to be recalculated, letters to be sent.**

You, as the employer, need to ensure these are all correct. Not only will current notices need to be changed, but whole new ones need to be added. You will have to revamp your payroll system to incorporate the subsidy. The premiums being paid by all subsidy-eligible participants will need to be recalculated to show the 65/35 payment split. Anyone who has lost coverage since September 1, 2008 needs to be contacted.

We believe these changes are extremely challenging for employers without professional COBRA administrative services such as those provided by HRS.

Contact [Sean Glasser](#) at 610-371-9505 x28 to find out how we can help.

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## ***In-Depth Overview—What Does it all Mean?***

Effective February 17, 2009, President Barack Obama signed the American Recovery and Reinvestment Act into law. As part of this stimulus bill, COBRA law has been modified.

Anyone who was *involuntarily terminated* from September 1, 2008 to December 31, 2009 will be eligible for 9 months of a special subsidy payment. Starting March 1, 2009, those who are eligible will need only pay 35% of the COBRA premium for 9 months. The employer must pay the other 65% of the premium. The bill does not change the length of COBRA. The 18 (or 29 or 36 months) is calculated based on the original qualifying event date.

Everyone who has experienced an event should be notified within 60 days of the bill being signed (February 17, 2009). Those who are eligible have 60 days from the date the letter was sent to sign up for COBRA. The subsidy only lasts for 9 months, effective March 1, 2009. If the event happens after March 1, 2009 but before December 31, 2009, then the 9 months will run starting from the later COBRA start date. If a subsidy-eligible individual is currently on COBRA and has paid in advance, you may either credit the payment toward future payments or reimburse the individual.

There will have to be some new notices, and changes to current ones. The qualifying event notice will have to be modified to include the new subsidy rules. A new notice must be created to be sent out to those already offered COBRA. If you include payment coupons, those would have to be changed to reflect the 65/35 payment split. Another new notice would be one informing COBRA participants that their 9 month subsidy has ended.

The employer must keep track of who is an involuntary termination or layoff and who is not. You should also keep an eye out for those individuals who are beyond the \$125,000 (\$250,000 for joint filing) threshold for the subsidy.

### **What are the qualified beneficiary's responsibilities?**

They must respond within 60 days of being notified. Also, and this differs from regular COBRA law, if they are *offered* insurance through a new employer (must include medical, dental/vision only, FSAs and HRAs do not cause loss of eligibility) that individual is no longer eligible for the subsidy.

## ***Unclarified Issues***

The Act suggests that if the employer pays any portion of the 35% of the COBRA premium that the terminated employee is expected to pay, then the right to the subsidy is lost. Employers should review severance policies to determine whether any changes should be made to the employer's contribution to COBRA coverage. Feel free to contact [HRS](#) to discuss plan structure to allow continuing of subsidy. If the employer offers multiple plans, the participant may be allowed to switch plans if the other available plan is less expensive. This is at the employer's preference. The decision must be consistent with all subsidy-eligible individuals and can only be made at time of sign up. Afterward, any changes must be made during open or special enrollments.

### **Some of our happy COBRA clients are:**

- ◆ The City of Allentown
- ◆ Quaker Maid Meats
- ◆ Abilities in Motion
- ◆ AAA East Penn
- ◆ Martin's Wood Products
- ◆ National Civil War Museum
- ◆ Automotive Services
- ◆ Straight Arrow
- ◆ Journal Publications
- ◆ YOUR COMPANY

### **Payroll Taxes**

**Employers are able to immediately include the amount of the COBRA subsidy as a credit against their payroll taxes,** using Form 941 or Form 941C. If the amount of the COBRA subsidy exceeds the amount of payroll taxes, employers will receive a direct payment of the difference from the federal government.

The Act provides for a recapture of the subsidy if it is provided to high-income individuals (defined as those with an adjusted gross income of \$125,000 for single filers and \$250,000 for a joint return). **Employers should consider advising highly compensated employees of their right to waive any premium assistance, to avoid any tax consequences.**

### **COBRA Timeline**

The Secretary of Labor, in consultation with the Secretary of Treasury and the Secretary of Health and Human Services now has 30 days to draft up the required letters. Employers have 60 days from the law's passage (February 17, 2009) to deliver these notices to all qualified beneficiaries. Those eligible for the subsidy have 60 days from the date the notice was sent to elect COBRA. If the person decides to elect COBRA, they would start effective March 1, 2009. The 63 day break in coverage would be ignored for these individuals. The length of their COBRA eligibility would not change from the original eligibility term. Therefore, if an individual would have started October 1, 2008, but chose not to elect, would have another opportunity to elect COBRA. If that person does elect, they would start March 1, 2009. However, the COBRA timeline would be 18 months starting from October 1, 2008. The subsidy would cover 65% of the person's COBRA for 9 months starting March 1, 2009.

#### **Timeline**

**September 1, 2008**—retroactive date for eligibility

**February 17, 2009**—law passed

**February 18, 2009**—first possible start date for subsidy

**March 1, 2009**—second possible start date for subsidy (for plans using calendar month for premium payment)

**March 19, 2009**—Department of Labor should have new notices completed

**April 18, 2009**—deadline for employers to notify any COBRA qualified beneficiaries of subsidy information (back to September 1, 2008)

### **COBRA Special**

**Take advantage of our reduced fee COBRA special before March 1!**

**We offer a complete turn-key service at very affordable prices.**

**For more information contact Sean at 610-371-9505 x28 or email [cobra@hrstndassociates.com](mailto:cobra@hrstndassociates.com)**

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