

American Recovery and Reinvestment Act: COBRA Premium Reduction

March 23, 2009

Presented by: James L. Hauser, Esq.

COBRA Fundamentals

- Requires group health plans that cover 20 or more employees to provide continuation coverage upon “qualifying event”
- Qualifying Event means
 - Death
 - Termination (other than for gross misconduct) or reduction of hours of covered employee (only event that entitles former employee to COBRA subsidy)
 - Divorce or legal separation
 - Dependent child ceasing to be dependent
- Coverage generally for up to 18 months (36 months in some cases)
 - Covered under another group health plan
 - Entitled to Medicare benefits under Social Security

COBRA Continuation Subsidy

- American Recovery and Reinvestment Act of 2009 (“AARA”)
- 65% federal subsidy of the cost of COBRA premiums
 - Paid by employer
 - Employer is reimbursed \$ for \$ through payroll tax credit
- Maximum of nine months of subsidized health insurance premiums
- Eligible individuals include:
 - Any employee who became or becomes eligible for COBRA from September 1, 2008 through December 31, 2009
 - Qualified beneficiaries of the covered employee
 - Provided the qualifying event consists of the **involuntary termination** of the covered employee’s employment during this time period

COBRA Continuation Subsidy

- Employer to send notice to eligible individuals:
 - No later than April 18, 2009
 - Inform eligible individuals of right to receive 65% subsidy
 - Inform eligible individuals not currently receiving COBRA of extended COBRA election period
- Eligible individuals not currently receiving COBRA will have 60 days from the date notice is provided to elect COBRA continuation coverage
- Duration of COBRA continuation coverage is 18 months from the date of the involuntary termination
- Duration of subsidy is 9 months from the date subsidy starts

Termination of COBRA Subsidy

- COBRA subsidy terminates on the first to occur:
 - Period ending 9 months from the date the eligible individual first receives the COBRA subsidy;
 - Covered individual becomes eligible for other group health insurance, or for Medicare; or
 - Individual's COBRA eligibility ends under applicable COBRA provisions

Massachusetts Mini-COBRA

- Applicable to Massachusetts employers with 2 to 19 employees
- Enforced by Massachusetts Division of Insurance
- Provides coverage similar to federal COBRA
 - Unlike federal COBRA, MA mini-COBRA provides coverage to same-sex spouses
- Many states have mini-COBRA analogs

COBRA Subsidy

Applicable to State Mini-COBRA

- Similar to Massachusetts, many states have adopted COBRA analogs for employers with 19 and fewer employees
- DOL guidance confirms that continuation coverage provided under state continuation coverage laws are subject to the AARA's subsidy requirements

COBRA Continuation Subsidy Employer Action Items

- Compile a list of all employees involuntarily terminated, other than for gross misconduct, since September 1, 2008
 - Employees must have been enrolled in group health coverage at time of termination and involuntary termination must be reason employee lost coverage
 - Identify covered spouse and dependents
 - Separate list into two:
 - Individuals that initially elected and currently receive COBRA
 - Individuals that did not elect and do not currently receive COBRA
- Distribute COBRA subsidy notices no later than April 18, 2009
- Employers must maintain “attestation of involuntary termination”
 - Caution: involuntary terminated can have many shades of meaning, including people who were “coached out” of their positions, those who were on leave and then terminated, and those who took severance packages
 - More guidance is required and anticipated from the DOL

Common Questions

- Can Employer recapture payment of COBRA premiums that it may have paid prior to enactment of AARA and after 9/1/08?
 - No, there is no authority to “recoup” or receive credit for portion of premiums paid prior to enactment of AARA.
- When does entitlement COBRA subsidy terminate?
 - Upon becoming *eligible* for other group health coverage-note, COBRA does not terminate until employee enrolls in another plan.
 - Query: How to monitor whether employee is eligible for other coverage.

Common Questions

- There is an income limitation of \$250k for married individuals and \$125k for individuals-do employers have to monitor?
 - No, this will be addressed on the employee's individual income tax return.
- Does the COBRA subsidy of 9 months extend COBRA continuation period?
 - No, the maximum COBRA continuation period is 18 months (or 36 months in some cases)
- What happens if employer shuts down?
 - Only entitled to COBRA if there is a group health plan (note, this includes a group health plan maintained by members of the former employer's controlled group).

James L. Hauser, Esq.

Brown Rudnick, LLP
One Financial Center
Boston, MA 02111

617-856-8130



an international law firm



www.brownrudnick.com

