

EXPERTS' FORUM | Human Resources

COBRA Changes Require Fast Action

The American Recovery and Reinvestment Act of 2009 (ARRA) signed into law on February 17, 2009 includes several changes to COBRA. These changes impose significant new responsibilities and potential liabilities on virtually all employers who sponsor a group health, dental or vision plan.

The speed with which ARRA was enacted and its nearly immediate effective date require employers and their COBRA administrators to act quickly. Employers will need to figure out how to fund a portion of the COBRA premiums for participants and then how effectively to take a credit on their FICA taxes. Coordinating these two unrelated items will be no small task. Under ARRA the federal government will temporarily subsidize 65% of the COBRA premium (or premium for a plan continued under a state law similar to COBRA) for Assistance Eligible Individuals.

Generally, an AEI is someone who was involuntarily terminated between September 1, 2008 and December 31, 2009. Voluntarily terminated employees, or anyone who lost coverage due to COBRA qualifying events other than involuntary termination, are not eligible for the subsidy. Beginning the first period after February 17, 2009 (for most employers March 1) an AEI is only required to pay 35% of the COBRA premium during the period in which the federal government subsidizes the premium.

Any qualified beneficiary (e.g., spouse or dependent child) who is an AEI can make an independent election for COBRA coverage and will be entitled to a premium subsidy. Because the legislation looks

back to employees who were involuntarily terminated from employment from September 1, 2008 forward, employers are responsible to contact former employees who did not elect COBRA and give them a second chance to elect COBRA now that the premium has effectively been reduced to 35% of the original cost.

Employees currently on COBRA must also be notified of the change as well. Since employers must initially cover the 65% of the premium not paid for by the COBRA participant and the federal government will reimburse employers through credits on payroll taxes, many new reporting obligations will be required. Those reporting obligations include providing the names of individuals for whom they are claiming the credit and the dollar amount claimed for each individual.

The subsidy is available to an AEI for up to 9 months.

Anyone eligible for coverage under another group health plan or Medicare is not eligible for the subsidy regardless of whether the person actually enrolls in coverage. Therefore, an involuntarily terminated employee who could elect coverage under a spouse group health plan is not eligible for the subsidy. Current COBRA participants may already have submitted payment for March and April premiums prior to being notified of the federal subsidy.

In such cases, the employer is required to either refund the excess payment or apply it towards future premium payments. This legislation creates many additional issues and questions that will need to be sorted out by employers, their accounting staff, their COBRA administrators and employees.



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