

CLIENT ALERT

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IMPORTANT UPDATE REGARDING.....

THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA)

Highlights of the new COBRA Provisions under ARRA:

- ⇒ **ARRA APPLIES TO ALL EMPLOYER SPONSORED GROUPS THAT ARE SUBJECT TO COBRA OR ANY STATE SPONSORED HEALTH CONTINUATION PLAN. REFERRED TO AS COBRA PLANS IN THIS CLIENT ALERT.**
- ⇒ **PROVIDE FOR A 65% SUBSIDY OF COBRA OR STATE CONTINUATION PREMIUMS FOR EMPLOYEE'S (AND THEIR FAMILIES) WHO WERE INVOLUNTARILY TERMINATED FROM THEIR JOBS FROM SEPTEMBER 1, 2008 TO DECEMBER 31, 2009.**
- ⇒ **THE SUBSIDY WILL END AT THE EARLIEST OF A) 9 MONTHS, B) ELIGIBILITY FOR OTHER COVERAGE (SPOUSAL, MEDICARE OR THROUGH A NEW EMPLOYER) C) NON-PAYMENT OF PREMIUM D) INELIGIBILITY DUE TO INCOME.**
- ⇒ **EMPLOYERS MUST PROVIDE ALL COBRA QUALIFIERS WITH ADDITIONAL INFORMATION REGARDING THE PREMIUM SUBSIDY AND ITS PARTICULARS BY MID APRIL. THE GOVERNMENT IS SUPPOSED TO FURNISH MODEL NOTICES FOR EMPLOYERS TO USE BY MARCH 19, 2009.**
- ⇒ **EMPLOYEES WHO ARE OTHERWISE ELIGIBLE FOR THIS SUBSIDY BUT DECLINED COBRA OR DROPPED IT BECAUSE IT WAS TOO EXPENSIVE WILL HAVE AN "EXTENDED ELECTION PERIOD" IN WHICH TO RE-ELECT COBRA COVERAGE. (IT IS POSSIBLE THAT THIS ELECTION PERIOD DOES NOT APPLY TO STATE CONTINUATION PLANS – INFORMATION RECEIVED TO DATE CONTRADICTORY)**
- ⇒ **THE EXTENDED ELECTION PERIOD WILL ALLOW EMPLOYEES TO ELECT COBRA AS OF MARCH 1, 2009 (FOR PLANS WHERE COVERAGE TERMINATES AT THE END OF THE MONTH) EVEN THOUGH THEIR INITIAL COBRA QUALIFYING EVENT MAY HAVE BEEN EARLIER. IF THERE IS A GAP IN COVERAGE, CARRIERS WILL NOT BE ALLOWED TO COUNT THAT GAP TOWARDS ANY PRE-EXISTING CONDITIONS LIMITATIONS.**
- ⇒ **EMPLOYERS ARE EXPECTED TO RECOUP THE COBRA SUBSIDIES THROUGH CREDITS ON THEIR PAYROLL TAXES.**

FREQUENTLY ASKED QUESTIONS

1. What is an Assistance Eligible Individual (AEI)?

An AEI is defined as the employee or a member of his/her family who:

- ✚ is eligible for COBRA continuation coverage from September 1, 2008 and December 31, 2009
- ✚ elects COBRA coverage; and
- ✚ is eligible for COBRA as a result of the employee's involuntary termination between September 1, 2008 and December 31, 2009.

2. How will an employer be reimbursed for the COBRA subsidy?

The COBRA subsidy amount is reimbursed by being claimed as a credit on the Form 941. Form 941 has been revised to allow for this credit which is claimed on Line 12a of the January 2009 revision. (Posted on the IRS website. www.irs.gov/pub/irs-pdf/f941.pdf) In addition, the Form 941 filer also needs to include the number of individuals provided COBRA premium assistance on Line 12b.

3. Can an employer decide to claim the credit at the end of the quarter rather than reducing its tax deposits during the quarter?

Yes. The employer can decide either to offset its payroll tax deposits or claim the subsidy as an overpayment at the end of the quarter.

4. Does ARRA replace the COBRA regulations?

No. ARRA provides additional provisions. Keep in mind that at this time, this is a temporary change to COBRA. All other COBRA Regulations remain in effect.

5. Whose responsibility is it to notify the employer when an AEI becomes eligible for new coverage?

It is the employee's responsibility to notify the employer of the availability of new coverage. An AEI who does not provide the proper notice will be liable for 110% of the improperly paid subsidy amount.

6. Can an Employer that offers two medical plans offer both to an AEI under ARRA?

Yes. If an employer offers additional coverage options to active employees, the employer may (**but is not required to**) allow assistance eligible individuals to switch the coverage options they had when they became eligible for COBRA. To retain eligibility for the ARRA premium reduction, the different coverage must have the same or lower premiums as the individual's original coverage. The different coverage can not be coverage that provides only dental, vision, a health flexible spending account, or coverage for treatment that is furnished in an on-site facility maintained by the employer.

7. How does the income limitation work?

If an individual's modified adjusted gross income for the tax year in which the premium assistance is received exceeds \$145,000 (or \$290,000 for joint filers), then the amount of the premium reduction during the tax year must be repaid. For taxpayers with adjusted gross income between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers), the amount of the premium reduction that must be repaid is reduced proportionately. Individuals may permanently waive the right to premium reduction but may not later obtain the premium reduction if their adjusted gross incomes end up below the limits.

8. **Whose responsibility is it to determine eligibility based on the income limits?**

It appears to be the individual's responsibility as opposed to the employers. AEI's will be responsible for accounting for the subsidy on their personal tax returns.

9. **What do I do if an employee has already paid the full COBRA premium for the month of March?**

You may provide a credit towards the following months as long the credit will be used up with 180 days or you may provide a refund.

10. **Where can I go for more information?**

Unfortunately, there is not much of substance on the government's website and some of the wording is open to interpretation. The following links may be useful:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf – All 407 pages!!!

<http://www.dol.gov/ebsa/pdf/COBRAPremiumReductionProvision.pdf> - Actual wording of the law as it pertains to COBRA

<http://www.dol.gov/ebsa/pdf/fsCOBRAPremiumReduction.pdf> - 3 Page Fact Sheet

<http://www.irs.gov/newsroom/article/0,,id=204709,00.html> – IRS News Release

<http://www.irs.gov/newsroom/article/0,,id=204708,00.html> – IRS Q and A

As always there are outstanding issues that need to be addressed. As additional guidance becomes available, we will keep you informed and provide model notices as soon as they are released.

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This e-mail is informational only and not meant as legal advice nor is it meant to advise you of your entire obligations under the American Recovery and Reinvestment Act of 2009.

February 27, 2009