

## Stimulus Act Provides New COBRA Subsidy

In addition to financial bailouts for troubled businesses and state and local governments, the American Recovery and Reinvestment Act of 2009 (the "Stimulus Act") provides a government subsidy of 65% of the COBRA premium actually charged to anyone who becomes eligible for COBRA between September 1, 2008 and December 31, 2009 because of an involuntary termination of employment (other than for gross misconduct). The subsidy is available beginning March 1, 2009, so employers and their COBRA administrators must act quickly to acquaint themselves with the new rules and to put those rules into effect. Here are some of the key features of the new law:

- Anyone who became eligible for COBRA between September 1, 2008 and February 17, 2009 must be given written notice of the new rules, including the subsidy, by April 18, 2009. Any otherwise eligible individual who previously rejected or terminated COBRA coverage must be given a period of sixty days after receipt of the required notice to make a new COBRA election. Coverage will begin March 1, 2009 for those individuals, and the maximum COBRA coverage period will be determined as if they had elected COBRA coverage when first eligible to do so, and had not terminated coverage.
- The subsidy is available beginning March 1, 2009. Plan administrators who are unable to begin implementation that quickly may continue to charge the full COBRA premium for the first one or two months (i.e., March and April, 2009). In that case, however, the plan administrator must either (i) credit the subsidy for those months against future COBRA premiums, if the subsidy for those months is expected to be fully applied within 180 days, or (ii) refund the subsidy for those months within sixty days.
- The subsidy is available for up to nine months, unless eligibility for COBRA coverage otherwise terminates sooner.
- If an individual becomes ineligible for COBRA coverage because he or she becomes eligible for coverage under Medicare or another group health plan, the individual must provide written notice to the COBRA plan administrator. Failure to do so will subject the individual to a penalty of 110% of the subsidy provided for the individual after the date he or she became eligible for the other coverage.
- The subsidy is 65% of the COBRA premium actually charged. In other words, if the covered individual is otherwise charged less than the full COBRA premium, the employer will not be able to claim a subsidy credit of 65% of the full COBRA premium. Instead, the employer will be able to claim a subsidy credit equal to 65% of the premium amount that is otherwise actually paid by the covered individual.
- The employer will claim the subsidy by taking a credit against its liability to deposit payroll taxes and federal income taxes withheld from employees' compensation.
- Eligibility for the subsidy phases out for single taxpayers with modified adjusted gross income between \$125,000 and \$145,000, and for married taxpayers filing jointly with modified adjusted gross income between \$250,000 and \$290,000.
- The subsidy does not apply to COBRA premiums for health care flexible spending accounts.
- The Stimulus Act does not explain how to determine whether a termination is "involuntary." An individual who is denied a subsidy because the plan administrator determines that termination was not involuntary, or for any

other reason, may appeal to the Department of Labor or the Department of Health and Human Services, which must render a final decision within 15 days.

If you have questions or would like additional information about the new COBRA subsidy requirements, please feel free to contact Brian Dougherty at (215) 587-5919 or [bdougherty@postschell.com](mailto:bdougherty@postschell.com).

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