



3062 East Walton Boulevard, Auburn Hills, MI 48326
Tel: (248) 409-1900 Fax: (248) 409-1999 | www.mi-employmentlaw.com

STIMULUS ACT CHANGES EMPLOYER COBRA OBLIGATIONS

By William E. Pilchak

The American Recovery and Reinvestment Act of 2009 recently approved by Congress and signed by the President on February 17, 2009 provides a federal government subsidy of COBRA premiums for up to nine months after an employee's involuntary termination of employment and also provides a special COBRA election right.

The Subsidy

The subsidy granted by the Act is 65% of COBRA premiums for up to nine months. Assistance eligible individuals" now need only pay 35% of their COBRA premiums. The remaining 65% of the premiums are paid by the employer (or a plan, if a multi-employer plan), which will be reimbursed to the employer or plan by the federal government. This reimbursement is accomplished by allowing the employer a credit against payroll taxes. The reimbursement will be taken on Form 941 that is filed for the period during which the subsidized premium is paid, and the payment of the subsidized premium will be treated as a deposit of payroll taxes. If the payroll tax credit does not fully reimburse the subsidy, the remaining amount will be reimbursed by check from the Treasury. The Secretary of the Treasury is expected to issue further guidance on the tax credit. The subsidy is not available for flexible spending accounts.

The subsidy begins at the next COBRA coverage period beginning after the date of the Act. For plans that use calendar months, this will be March 1, 2009. The subsidy ends at the earliest of the following: (1) the date the COBRA beneficiary becomes eligible for other group health plan coverage, (2) nine months after the date the subsidy began, or (3) the end of the maximum COBRA coverage period.

Assistance Eligible Individuals

The COBRA premium subsidy is applicable to "assistance eligible individuals" who are (1) involuntarily released from employment and eligible for COBRA coverage between September 1, 2008 and December 31, 2009, (2) elect COBRA coverage during the original or special election period. A qualified beneficiary of an assistance eligible individual may likewise re-elect and claim the subsidy, even if the formerly covered employee does not. The subsidy is phased out for individuals with adjusted gross income between \$125,000 and \$145,000 (\$250,000 to \$290,000 for joint filers.) Those who earn in excess of \$145,000/\$290,000 will not benefit from the subsidy, because such

individuals must repay the subsidy as a special tax for the year in which the subsidy is provided.

Special COBRA Election Period

The Act also provides individuals a second opportunity to elect COBRA coverage. Individuals who lost coverage due to involuntary termination on or after September 1, 2008, and who either did not elect COBRA or elected and then dropped such coverage or were terminated from coverage for not paying premiums, are given a second chance to elect COBRA coverage. If such individual elects COBRA coverage during the 60-day period after such individual receives notification of the special election, such individual will also qualify for the subsidy. However, the new election does not extend the 18/36 month COBRA coverage expiration dates that have always applied. (In other words, one terminated September 1, 2008, who did not elect coverage before, but elects coverage March 1, 2009, will have lost six months of available COBRA coverage. The 18 month period still expires on March 1, 2010.)

Required Employer Actions

Information about the premium subsidy and the option to enroll must be added to current COBRA notices or provided to employees in a separate document. The additional information or notification must include:

- The forms necessary for establishing eligibility for premium reduction;
- The name, address and telephone number of the plan administrator;
- A description of the 60-day extended election period;
- A description of the beneficiary's obligation to notify the plan of eligibility for coverage under another plan or Medicare, and the penalty for failing to do so; and
- A prominently displayed description of the qualified beneficiary's right to a reduced premium and any conditions on entitlement under the reduced premium.

The U. S. Dept. of Labor is required to issue model COBRA notices that comply with the requirements of the ARRA by March 19, 2009. The Plan Administrator must provide the amended COBRA Notices to assistance eligible individuals by April 18, 2009. However, since the subsidy takes effect on March 1, Pilchak Cohen & Tice, P.C. has posted a suggested preliminary form on its website, under "Forms and Resources." It is also attached as pages 3 and 4 of this alert.

If you are receiving this notice, you or another member of your organization is a client, a member of one of the trade associations or chambers of which we are also members, or have requested a subscription to these notices. If you no longer wish to receive these notices, please e-mail us at pct@mi-employmentlaw.com or call (248) 409-1900.

This communication is intended for general information purposes only and is not intended to constitute legal advice with respect to any individual facts or circumstances. You are urged to consult with one of our attorneys regarding your own situation and your specific question. We would be happy to assist.

PILCHAK COHEN & TICE, P.C.

IMPORTANT NOTICE FOR EMPLOYEES AND FORMER EMPLOYEES

Important Information About Your COBRA Continuation Coverage Rights Under The American Recovery and Reinvestment Act of 2009

The COBRA Subsidy For Assistance Eligible Individuals

Under the American Recovery and Reinvestment Act of 2009 (“ARRA”), Employers will subsidize 65% of the COBRA premium payments for “assistance eligible individuals.” Consequently, an “assistance eligible individual” need only pay 35% of the COBRA premium. You are an “assistance eligible individual” if you are a qualified beneficiary under COBRA who (1) becomes eligible for COBRA between September 1, 2008 and December 31, 2009 due to an involuntary termination of employment and, (2) elected COBRA coverage during the original election period or a special election period required by ARRA. A qualified beneficiary of a formerly covered employee may elect and claim the subsidy even if the formerly covered employee does not so elect. The 65% subsidy is phased out if your adjusted gross income is between \$125,000 and \$145,000 (\$250,000 to \$290,000 for joint filers) because you must repay the subsidy as an additional tax in the year the subsidy is received.

The subsidy begins the next COBRA coverage period after the date of the Act, February 17, 2009. For plans using calendar months, this will be March 1, 2009. The subsidy ends upon the earliest of the following: (1) nine months after the subsidy began (even if COBRA coverage extends beyond the end of the subsidy), (2) the date you become eligible for Medicare or other group health insurance, or (3) the end of the maximum COBRA coverage period. The subsidy will also end if you fail to pay your required 35% of the COBRA premium. You are required to notify the group health plan if your right to the subsidy ends due to eligibility for other group health insurance coverage or Medicare. A penalty of 110% of any subsidy improperly paid by the employer will be assessed against you if you do not promptly notify the health plan if you are eligible for other coverage or Medicare.

Second Chance To Elect COBRA

If you lost health insurance coverage due to an involuntary employment termination on or after September 1, 2008, and either did not elect COBRA coverage or elected and then dropped such coverage or were terminated from COBRA for not paying premiums, you may now elect COBRA coverage during a 60-day special election period commencing after you receive notice of your right to this election. If you elect COBRA coverage during this 60-day period you will also qualify for the 65% subsidy. Nevertheless, your new election of COBRA coverage does not extend the 18/36 month COBRA coverage period that has always applied. In other words, if you were involuntarily terminated on September 1, 2008 under circumstances that entitled you to 18 months of COBRA coverage, but did not elect this second chance coverage until March 1, 2009, COBRA coverage still runs out on March 1, 2010, the 18 month anniversary of your separation.

[The Next Paragraph May Be Omitted If The Employer Does Not Offer a Less Expensive Option]

Option to “Opt Down” To Less Expensive Coverage

If offered by the employer, you have the right to elect coverage under a health insurance option other than the option by which you were covered at the time of termination, provided the option (1) is made available to active employees, (2) has the same or lower cost (pre-subsidy) as the option which previously covered, and (3) is other than a flexible spending account as defined in section 106(c)(2) of the Internal Revenue Code of 1986 or coverage consisting only of dental, vision, or certain other limited services. If offered by the employer, you may elect this option within 90 days following receipt of the required notice. This replacement coverage will run for the full duration of your COBRA coverage, even after the expiration of the nine-month COBRA subsidy.

Enrollment And Questions

The form necessary to establish your eligibility for the 65% subsidy is attached to the COBRA Coverage Election Notice form provided with this Notice. If you have any questions about this Notice or your rights to COBRA continuation coverage, you should contact *[enter name, address, and telephone number of the person responsible for COBRA administration for the plan]*

STIMULUS ACT
COBRA ELECTION FORM

Name: _____
(Printed)

Date of Involuntary Termination: _____

Check here if you are eligible for health care under another health insurance plan (i.e.: spouse's plan) ___ or Medicare ___. (Federal penalties apply for false answers)

Signature

Date

If you elect to participate in the subsidy, please return this form with your COBRA Continuation Coverage Election Form to *(Name and address of person responsible for COBRA administration for the plan.)*