

CLIENT ACTION Bulletin

Employee Benefits

DOL and IRS Guidance on the COBRA Premium Subsidy

SUMMARY

The Department of Labor (DOL) has made available model notices that an employer may use to inform certain qualified beneficiaries about the availability of a temporary federal assistance program to help pay for continuation coverage under a group health plan. The model notices are particularly helpful because group health plan sponsors face an initial deadline of April 18 to notify individuals who lost coverage due to a COBRA qualifying event between Sept. 1, 2008, and Feb. 16, 2009, about the premium assistance that became available under the recent “American Recovery and Reinvestment Act” (ARRA). (More information about ARRA’s COBRA-related provisions is discussed in *Client Action Bulletin 09-02*.) Separately, the IRS released *Notice 2009-27*, providing guidance to group health plan sponsors for determining if an individual has been “involuntarily terminated” from employment and thus is eligible for premium assistance.

DISCUSSION

Overview of the COBRA Premium Subsidy

ARRA requires nearly all group health plan sponsors to offer nine months of subsidized healthcare continuation coverage to certain individuals who lose coverage due to an “involuntary termination” of employment and who are not eligible for Medicare or other group health plan coverage. In general, qualified beneficiaries are eligible to receive COBRA continuation coverage for a total of 18 months (36 months in certain circumstances); now beneficiaries may have their premiums reduced by up to 65% for nine of these months. Qualified beneficiaries who opt for the COBRA healthcare continuation coverage must pay 35% of the cost of premiums (i.e., of the full cost plus the 2% administrative fee assessed under the general COBRA rules).

Individuals qualifying for the premium assistance are those with an involuntary termination of employment from Sept. 1, 2008 through Dec. 31, 2009. The amount of any premium reduction is excluded from an individual’s gross income. However, there is a phased-in recapture of the subsidy in the tax of individuals with modified adjusted gross incomes more than \$125,000 annually (single filers) and \$250,000 (joint filers), with complete recovery of the subsidy at \$145,000 and \$290,000, respectively. The premium reduction applies as of the first coverage period that premiums are normally paid, beginning on or after Feb. 17, 2009 (the date ARRA was enacted).

Typically, the employer pays the other 65% of the premium and receives a credit against payroll tax liabilities for the amount paid. (Payroll tax liabilities are defined as federal income tax withholding, the employee share of Federal Insurance Contributions Act (FICA) tax, and the employer share of FICA tax.) In the case of a group health plan that is a multiemployer plan, the multiemployer plan is allowed the credit. For a group health plan subject to the federal COBRA requirements, or a group health plan under which some or all of the coverage is not provided by insurance, the employer maintaining the plan is allowed the credit. For any other group health plan subject to ARRA (generally fully insured coverage subject to state continuation coverage requirements), the insurer providing coverage under the group health plan is allowed the credit. Under ARRA’s provisions:

- Qualified beneficiaries who lost coverage due to involuntary termination before ARRA’s Feb. 17, 2009, enactment date and did not elect COBRA coverage at the time must be permitted to elect coverage within 60 days of being notified of the special election period. Similarly, those who elected only COBRA medical coverage but not dental will have the right to elect dental coverage also, and vice versa. (The special election period does not extend the COBRA continuation coverage period beyond the original maximum period.)
- Employers may allow affected individuals to change their coverage options to a lower-cost plan when electing COBRA coverage.
- Qualified individuals opting for the COBRA coverage must pay their 35% share of the COBRA premiums to the employer before the employer may be credited with the 65% subsidy.

- Plan sponsors must submit periodic reports to the IRS, documenting the involuntary termination of each employee covered by the subsidy, the amount of payroll taxes offset for the reporting period, and the estimated tax offsets for the following reporting period.
- Upon becoming eligible for other coverage during the subsidized period, the individual must notify the group health plan in writing or face penalties.
- The period between the loss of coverage and the beginning of the first coverage period on or after the ARRA's enactment date does not count toward the 63-day break-in-insurance coverage.

Notification

The law requires plan sponsors to notify qualified individuals, including COBRA beneficiaries, of their possible status as "assistance eligible individuals," which qualifies them to receive a 65% reduction in their COBRA premiums for nine months or until they become eligible for coverage under other qualifying plans (e.g., another group health plan or Medicare). A failure to notify individuals subjects the employer sponsoring the group health plan (or, in the case of a multiemployer plan, the group health plan itself) to penalties of \$100 per day per eligible beneficiary. The DOL has posted on its Web site (www.dol.gov/ebsa/COBRAmodeInotice.html) model notices that plan sponsors may use. The four models available are:

- a "full version" general notice, which may be sent to all qualified beneficiaries who lose coverage from Sept. 1, 2008, through Dec. 31, 2009, regardless of the type of qualifying event;
- an "abbreviated" general notice, which may be sent to current COBRA beneficiaries who lost coverage after Sept. 1, 2008, regardless of their qualifying event;
- an "alternative notice," which may be used by employers that must comply with state-based continuation coverage rules that are similar to COBRA; and
- a notice in connection with an extended election period, to be used to inform qualified beneficiaries who lost coverage due to involuntary termination between Sept. 1, 2008, and Feb. 17, 2009, and who did not elect COBRA coverage (or elected medical or dental, but not both; or who elected COBRA but dropped coverage before Feb. 17, 2009) that they have a new 60-day window from the date they receive notice to elect COBRA.

All of the notices include a form that qualified individuals must complete to be eligible for the premium assistance. In addition, the notices contain a form that the qualified individuals may use to notify the plan sponsor (or administrator) of becoming eligible for coverage under another qualifying plan. An assistance eligible individual can permanently waive the right to the premium reduction by providing to the entity to be reimbursed a signed and dated notification referencing the "permanent waiver." No government agency needs to be notified of this waiver. The DOL has created and is updating a Web page dedicated to the new COBRA requirements. Go to: www.dol.gov/ebsa/COBRA.html.

"Involuntary Termination" Defined

IRS Notice 2009-27 clarifies what it means for an employee to be "involuntarily terminated," which is the required qualifying event, and which makes the person eligible for the reduced premium provided for in ARRA. According to the IRS Notice, the following are examples of involuntary termination:

- An employer-initiated termination, "other than due to the employee's implicit or explicit request";
- A layoff or furlough, even if the employee is able to return to work at a later date;
- A plant closing, even if the employee declines to relocate; and
- A termination elected by the employee in return for a severance package.

The IRS has created and is updating a Web page dedicated to COBRA-related questions and answers. Go to: <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>.

ACTION

Employers have limited time to implement the provisions of the new law. Extended notices must be sent to appropriate, qualified beneficiaries (as discussed above) by April 18, 2009, notifying them of their second chance to elect COBRA and of the available subsidy. All qualifying beneficiaries who have COBRA and had a qualifying event on or after Sept. 1, 2008, must be notified of the available subsidy. And, COBRA procedures for future qualifying events must be revised to include notice of the available subsidy.

If you have any questions about the DOL model notices or the new IRS guidance, please contact your Milliman consultant.

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