

WHAT YOU NEED TO KNOW ABOUT COBRA AND THE RECOVERY ACT

The following is an overview and is not intended to substitute legal or compliance advice. We suggest you consult your legal counsel for specific guidance.

What is COBRA?

The Consolidated Omnibus Budget Reconciliation Act, Public Law 99-272 ("COBRA") is a Federal law that requires employers with 20 or more employees to offer employees and dependents, who would otherwise lose their eligibility, the continuation of medical, dental, and vision benefits after the occurrence of a qualifying event. Qualifying events include termination of employment, or the divorce from, or death of, a covered spouse.

Some states have their own continuation of coverage laws for employer groups of qualifying sizes who are not eligible for Federal COBRA. The Recovery Act does apply to state continuation coverage that is similar to the Federal COBRA.

Recovery Act requirements for continuation of coverage

There are new rights for individuals "involuntarily terminated" from employment between September 1, 2008 and May 31, 2010. The new rights are:

1. Individuals can now qualify for a subsidy equal to 65% of cost paid for state or federal continuation of coverage for the individual and his or her dependents.
2. Individuals who were eligible for federal continuation of coverage but are not enrolled in it now have a one-time opportunity to enroll. Group health plans have 60 days to notify individuals of this right; and the individual has 60 days after notice to enroll.
3. Optional: Employers and employee organizations may, but are not required to, offer individuals currently enrolled in state or federal COBRA the right to change coverage to a different health coverage option offered through the group.

THE PREMIUM SUBSIDY

Who qualifies?

Individuals who lose health coverage between September 1, 2008 and May 31, 2010 and meet all of the following conditions:

- The loss of health coverage due to an involuntary termination of employment; and
- The individual is eligible for one of the following types of state or federal continuation coverage:
 - ◆ Continuation coverage offered by a group through ERISA; or
 - ◆ Continuation coverage applicable to state and local government plans; or
 - ◆ Temporary continuation coverage offered through FEHB (Federal Employees Health Benefits Plan); or
 - ◆ State continuation coverage that is comparable to federal continuation requirements (must continue to be substantially similar to what was provided under the group's health plan, at a monthly cost that is based on a specified percentage of the group's cost of providing such coverage).

- The individual is not eligible for:
 - ◆ Coverage under another group's health plan (except for coverage of dental, vision, counseling and/or referral services); or
 - ◆ Medicare.
- Modified adjusted gross income must not exceed \$145,000 for an individual, \$290,000 for a joint income filer. The subsidy is phased out if the modified AGI is between \$125,000 and \$145,000 for individual filers, \$250,000 and \$290,000 for joint filers.

It is up to the individual taxpayer to report the amount of any subsidy on their federal income tax returns and to repay any subsidy amounts that exceed the income limitations.

In addition to the above requirements:

- Any family members who qualify for federal or state continuation of coverage also qualify for the premium subsidy.
- In some cases where the qualifying individual died and continuation of coverage is provided through ERISA for the surviving dependents, coverage will continue to qualify for the subsidy.
- The subsidy may be used for any health coverage offered by a group health plan subject to federal or state continuation coverage requirements (except for a health Flexible Spending Arrangements), including dental or vision benefits.

How much is the premium subsidy?

The subsidy covers 65% of the cost charged to the individual. If any portion of the premium charged is paid by the individual's former employer, that amount is not included in the calculation. For example, if the monthly premium is \$1,000 and the employer pays \$500 of this amount, the subsidy would be 65% of the \$500 the individual pays or \$325.

When does the subsidy program begin?

The subsidy is available for the period of coverage beginning on or after the date of enactment (February 17, 2009) – and not before.

How long does the subsidy last?

The subsidy will continue until the earliest of the following events:

- The individual is no longer enrolled in state or federal continuation of coverage
- The individual is eligible for coverage under a group's health plan (except for coverage only for dental, vision, counseling or referral services) or Medicare
- Fifteen months after the date the individual begins receiving the subsidy

Does the subsidy continue after May 31, 2010?

Yes, but only for individuals who still qualify for coverage until fifteen months after the date they began receiving the subsidy or until they are no longer eligible. For example, an individual who begins coverage on February 1, 2010 will continue receiving the subsidy until May 2011 as long as they remain enrolled and do not become eligible for other specified coverage.

Who is responsible for the subsidy?

It depends on the type of coverage:

- The group health plan is in the case of a multi-employer group health plan;
- The employer is in the case of a group health plan subject to the federal COBRA requirements;
- The insurance carrier is in the case of continuation coverage offered according to State-COBRA.

How does the responsible entity recover the subsidy amount?

The responsible entity can offset the qualifying amount of any payments against their payroll tax payments to the federal government. This can be offset from employee income tax withholding, employee FICA tax withholding or Employer FICA tax obligations.

The IRS has posted a revised Form 941 and instructions for reporting the amount of the premium subsidy that is taken as a payroll tax set-off.

What about individuals who qualify for the subsidy, but are already paying continuation coverage premiums?

There is a 60-day "grace period" for the premium subsidy to begin for individuals who already have paid for state or federal coverage. The responsible entity may either (1) refund the subsidy amounts to the individual; or (2) reduce subsequent premium amounts as a credit for the subsidy.

What about individuals who enrolled for the subsidy, but are at the end of the reduced premium period?

These individuals will have additional time to pay for the reduced premiums. To continue their coverage they must pay the 35% of premium costs by (60 days after the date of enactment) or, if later, 30 days after notice of the extension provided by the employer.

CHANGING COVERAGE OPTION

Individuals already enrolled in continuation coverage can change coverage

Employers have the option to offer a one-time opportunity for individuals already enrolled in continuation coverage to change to a different coverage prior to the annual open enrollment period if each of the following conditions is met:

- The individual qualifies for the subsidy
- The premium for the new coverage does not exceed the premium amount paid for the coverage the individual is currently enrolled
- The different coverage is also offered to active employees of the employer
- The coverage is not:
 - ◆ Coverage that provides only dental, vision, counseling, and/or referral services
 - ◆ Coverage under a health Flexible Spending Arrangement
 - ◆ Coverage for services or treatments furnished in an on-site medical facility maintained by the employer consisting primarily of first-aid services, prevention and wellness care, and/or similar care.

Individuals must be given a notice of their right to choose a different conversion option, and individuals have 90 days to make a choice.

NOTICES

All qualifying individuals after September 1, 2008 must be informed of:

- The premium subsidy
- Enrollment in federal continuation coverage (if not already enrolled)
- Enrollment in a different plan option (if the employer makes such option available)

A good rule of thumb is to provide these notices to anyone who qualifies for COBRA regardless if they qualify for the premium subsidy.

More information can be found at the following Government websites:

The Department of Labor, Employee Benefits Security Administration

<http://www.dol.gov/ebsa/COBRA.html>

The Department of Internal Revenue Service

<http://www.irs.gov/newsroom/article/0,,id=204505,00.html>.