

GREENBERG & ASSOCIATES INSURANCE

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*** * * IMPORTANT BULLETIN * * ***

TO: GROUP HEALTH CLIENTS

FROM: GREENBERG & ASSOCIATES INSURANCE

DATE: March 5, 2009

RE: COBRA Continuation Assistance under the American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (ARRA) was signed into law February 17th by President Obama. ARRA includes important changes to COBRA. Below is a summary of the provisions of ARRA that relate to these changes to your COBRA requirements as we understand them at this time. It is important that you know that these changes are required and failure to comply will potentially result in substantial penalties. Therefore, it is important to read this bulletin carefully and take immediate action! Employers will be required to subsidize 65% of an involuntarily terminated former employee's COBRA and/or State Continuation premiums for terminations that take place between September 1, 2008 and December 31, 2009. In turn, the Employer will be reimbursed for the COBRA subsidies by claiming a credit on their next Form 941 payroll report filing.

After you've reviewed the following, please let us know if you have any questions.

SHARON AND ADRIENNE

- 1) **ARRA provides for a 65% subsidy of an involuntarily terminated former employee's COBRA premiums. (COBRA premium is defined as the insurance premium plus 2% administration fee)**
- a) **Eligible Benefits:** The subsidy applies to medical coverage or any other combination of coverage, provided medical coverage is also elected. FSA, stand alone dental, and/or vision coverage are not eligible for the subsidy.
 - b) **Length of Subsidy:** The subsidy must be offered until the earliest of:
 - i) 9 months from the date the employer begins providing the subsidy;
 - ii) the date the former employee is eligible for Medicare benefits or other group health coverage;
 - iii) the date the former employee's COBRA period expires; or
 - iv) the date the former employee no longer pays their 35% portion of the premium.
 - c) **Eligibility:** The premium subsidy for COBRA is available to "assistance eligible individuals" (AEI). An AEI is the employee or member of his/her family who:
 - i) is eligible for COBRA at any time between September 1, 2008 and December 31, 2009;
 - ii) elects COBRA coverage; and
 - iii) is eligible for COBRA as a result of the employee's involuntary termination between September 1, 2008 and December 31, 2009

Note: The exclusion for "gross misconduct" is still valid, however, involuntary termination includes loss of employment for job performance reasons. In addition, former employees eligible for COBRA effective 9/1/2008 because of an employment termination that occurred before 9/1/2008 are not eligible for the subsidy.
 - iv) There are four categories of eligible employees that qualify for the subsidy:
 - (1) those who were involuntarily terminated and previously declined COBRA;
 - (2) those who were involuntarily terminated and were on COBRA but later dropped coverage, but still have COBRA remaining eligibility;
 - (3) those who were involuntarily terminated and are currently on COBRA; and
 - (4) those who will be involuntarily terminated between March 1st and December 31, 2009.

- d) **Timing:**
- i) By April 17, 2009, the first three categories above must receive a new 60-day period to elect COBRA with the subsidy commencing on March 1st for most plans. It is our understanding that those who have voluntarily left employment should also receive the notice (despite the fact that voluntarily terminated employees are not eligible for the subsidy).
 - ii) A refund and credit process will likely occur to account for March (and likely April) paid premiums due to timing issues.
 - iii) The subsidy is not retroactive and is effective March 1, 2009. The subsidy does not apply to premiums incurred between September 1, 2008 and March 1, 2009. Former employees will receive creditable coverage rights under HIPAA for the period they did not have health coverage thus eliminating any potential break in coverage for preexisting condition provisions, even if they were NOT insured during that period of time.
- e) **Income Restrictions:** Individuals who receive the subsidy and have a single/joint adjusted gross income of \$145,000/\$290,000 in the tax year that they receive the subsidy, must refund the subsidy to the government as an additional income tax liability on their tax return. For those with incomes of \$125,000/\$250,000, but less than \$145,000/\$290,000, the income tax will be based on a sliding scale. The employer is not required to verify income prior to paying the subsidy and receives no penalty for a tax credit received for ineligible individuals.
- f) **Taxes:** The subsidy amount is not a taxable event for the recipient.
- g) **Funding:** Employers are responsible to pay the COBRA subsidy, but they will receive a corresponding reimbursement through an offset or credit to their 941 federal payroll tax obligations.
- i) Credit cannot be taken until the employee pays their 35% share of the premium, and the employer cannot seek advance credit.
 - ii) Until reporting details are finalized, employers must include the following documents with payroll tax Form 941 or 941c
 - (1) an attestation that the former employees they are seeking reimbursement for were indeed *involuntarily* terminated;
 - (2) the amount of offset or credit for that period;
 - (3) the anticipated amount of offset or credit for future periods;
 - (4) the tax identification numbers of the former employees for whom the credit is requested; and
 - (5) whether the coverage was/is for single or family coverage.
 - iii) The Department of Treasury is responsible for finalizing and communicating this process - inclusive of how employers can receive direct government reimbursement if employer paid subsidy amounts are greater than payroll tax obligations. (See attached IRS Q & A for additional information.)
- h) **Model Notices:** Employers are required to provide notification to all qualified individuals of the availability of the premium subsidy and of their option to enroll in the current medical plan, or, alternative options if available from the employer. The Department of Labor is also required to issue Model notices within 30 days of the Enactment Date of the American Recovery and Reinvestment Act. Therefore, you will be able to access Model Notices at the DOL website at www.dol.gov/ebsa/COBRA.html by March 17, 2009. The Model Notices should contain all of the content requirements of the new provisions for COBRA. Notice requirements can be satisfied by either amending your current Qualifying Event notice, or by sending out the upcoming Model Notice to be provided by the DOL. Keep in mind also, that changes will most likely need to be made to Initial Notices. We are hopeful that the DOL will also provide Model Initial Notices as they have done in the past. In addition to the Model Notices, we have been told by the Employee Benefits Security Administration (EBSA) in the regional office in San Francisco that the DOL will also be producing an updated Employer's Guidance Handbook which will be available at the same website.
- i) **Penalties:** For failure to provide the new required notifications to your COBRA eligible employees, ERISA can impose a \$110/day penalty. In addition, the IRS can impose an additional \$100/day in excise taxes for failure to comply. The employer can be subject to Civil liability. COBRA Continents also have a potential for penalization. Subsidies may end earlier than the 9 month maximum period if an AEI becomes ELIGIBLE for other group health coverage or Medicare. The AEI must report to the former employer when they become eligible for other such coverage. Failure to do so can result in a 110% penalty.
 - j) **State Continuation:** Continuation coverage that qualifies for the subsidy is not limited to COBRA coverage. It also includes continuation coverage required under comparable State laws and continuation coverage for health plans maintained by the State or Federal government. We are waiting for further clarification from each affected state. The State of Oregon does have such a law, but, to date they have not clarified the requirements. As soon as we have specifics regarding the notification requirements, who will provide the payment of the subsidy, some States are having the carriers do so, and how credits will be adjudicated for Oregon State Continuation, we will let you know.

For more information, please visit the Department of Labor's website for compliance assistance at:

www.dol.gov/ebsa/COBRA.html