

The American Recovery and Reinvestment Act of 2009

February 23, 2009

President Obama signed the American Recovery and Reinvestment Act of 2009 (commonly called the Stimulus Package) on February 17, 2009. A major component of the Stimulus Package is a subsidy for certain people to help pay for health coverage. This subsidy is available to employees (and their family members) who were involuntarily terminated between September 1, 2008 through December 31, 2009. The subsidy is 65% of person's share of the premiums, the subsidy begins March 1, 2009 and the subsidy can last up to nine months.

The subsidy can be used to pay COBRA premiums or, if the employer is not subject to COBRA (e.g. a small employer with less than 20 employees), the subsidy can be used to pay for health coverage offered under state continuation laws. The premiums associated with all group health plans (e.g. health, dental, vision and HRAs) are eligible for the subsidy; health FSAs are not eligible for the subsidy.

Although the subsidy can last up to nine months, the period can be cut short for a number of reasons. The subsidy period ends on the earlier of (i) the date the person becomes eligible (as opposed to actually enrolled) under another group health plan or Medicare or (ii) the person's COBRA terminates for other reasons (e.g. the non-payment of premiums). The person is required to notify the employer when he or she first becomes eligible for another group health plan or Medicare.

The subsidy is in the form of a payroll tax credit. The amount of the subsidy is 65% of the amount required to be paid by the person. Basically the person pays 35% of the required amount and the employer makes up the difference. The employer then deducts that amount from the employer's payroll tax deposits to the Federal government. Assume the cost of single coverage is \$ 450 per month. The COBRA premium is \$ 459 (i.e. \$ 450 x 102%). However, the Stimulus Package says the person only has to pay 35% of the \$ 450. So if the person pays \$ 157.50 (i.e. 35% of the \$ 450) within the timeframe allowed under COBRA, the employer must make up the difference and submit the \$ 450 to the carrier. The employer then deducts its portion of the premiums (i.e. \$ 292.50) from the payroll tax deposits. The Stimulus Package phases out the subsidy for certain higher paid former employees.

At first blush the rules appear straight forward. However, from an administrative standpoint, they are extremely complicated. For example, there are new notice requirements for all terminated employees during the subsidy period and a special one-time sixty day special enrollment period for employees who were involuntarily terminated on or after September 1, 2008 and who originally declined COBRA.

FLASHUP DATE

We realize you probably are receiving a substantial amount of materials from a number of sources. However, there are many open issues and Congress acknowledged that the legislation did not answer all the questions. Therefore, the law specifically states that the Treasury Department and Department of Labor are required to issue more detailed rules and model notices by the middle of March. Therefore, we believe it is premature at this time to contact former employees about the subsidy. However, we do believe employers should get ready to implement the subsidy by doing the following steps:

1. Identify all employees terminated on or after September 1, 2008. You should segregate these into those employees who were involuntarily terminated from those who voluntarily quit. Finally you need to determine which of the involuntarily terminated employees (and their family) currently are on COBRA (or state continuation health coverage) and which have declined coverage.
2. Ensure that you have accurately calculated your COBRA premiums. There are strict guidelines on how to calculate the amount employers can charge people on COBRA. Now that the government is going to pay part of that amount, employers should be certain that the amounts are correct.
3. Establish procedures to accurately track the date and the amount the people pay towards their portion (i.e. the 35%) of the premiums.
4. Coordinate with the Payroll Department (or payroll vendor) so that they can keep track of the employer's subsidy (i.e. the 65%) of the premiums.
5. Make sure there are procedures in place between the HR Department and Payroll Department to track each person's subsidy so that the employer can accurately determine when the person's subsidy should end.
6. Monitor the situation so that the employer will be able to implement the subsidy, send the appropriate notices and comply with the new rules when it is best to do so. Be aware the notices and rules are to be released from the government agencies within the next thirty days (March 19, 2009).

McGohan Brabender is monitoring the situation and will contact clients as soon as the government issues the model notice and new rules. McGohan Brabender also is preparing a package that will help you comply with this part of the Stimulus Package. However, as we indicated, until the government releases the additional material, it may be premature to contact current and former employees.

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