

Legislative Brief

The American Recovery and Reinvestment Act of 2009 (ARRA): Subsidized COBRA Coverage



On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA). One of the provisions of the new legislation allows a subsidized period of COBRA continuation coverage for certain former employees. This subsidy will become effective as of March 1, 2009. Procedural details of the law are still emerging, but the key points are itemized in the Questions & Answers below.

What COBRA premium subsidy does the American Recovery and Reinvestment Act of 2009 provide?

The federal government will subsidize 65% of the COBRA premium due for assistance eligible individuals for up to 9 months.

How is the COBRA subsidy provided under the American Recovery and Reinvestment Act of 2009?

A group health plan can require an individual who is eligible for assistance to pay only 35% of the actual COBRA premium. The federal government will pay the remaining 65% of the premium due by allowing the employer to take a credit against the employer's liability to deposit payroll taxes and federal income taxes withheld from employees' compensation.

What individuals are eligible for COBRA premium assistance under the American Recovery and Reinvestment Act of 2009?

To qualify for the premium subsidy, an employee must be involuntarily terminated between September 1, 2008, and December 31, 2009, and the employee must elect COBRA coverage either during the original COBRA election period or during the special election period provided for under the Act. The subsidy does not apply to individuals who voluntarily resign or to employees who lose their health coverage due to a reduction in work hours. Employees with adjusted gross incomes of more than \$125,000 (or \$250,000, if married and filing a joint return) are not eligible for the COBRA subsidy.

What is the COBRA subsidy period under the American Recovery and Reinvestment Act of 2009?

The subsidy is available to each eligible individual for up to 9 months beginning on the later of March 1, 2009, or the date that the eligible individual loses coverage under the plan. So if an individual's COBRA coverage began on December 1, 2008, the subsidy would be available for 9 months beginning on March 1, 2009. The subsidy ends when the assistance eligible individual becomes eligible for health coverage under another group health care plan (the assistance eligible individual must notify the plan providing COBRA coverage in writing when this happens) or Medicare; or 9 months after the first day to which the subsidy applies; or the end of the maximum COBRA coverage period required by law; or for an eligible individual who elects COBRA during the special enrollment period, the end of the maximum COBRA coverage period that would have applied had COBRA coverage been elected when first entitled to do so. An assistance eligible individual who becomes eligible for other employer coverage, but who declines to enroll in that coverage, loses the COBRA subsidy, but not the right to maintain the COBRA coverage at full cost.

Does the subsidy under the American Recovery and Reinvestment Act of 2009 apply to COBRA premiums for all types of group health plans?

No, the subsidy does not apply to COBRA premiums for health care flexible spending accounts. It does apply to other COBRA-eligible plans such as medical, dental and vision.

Do any special COBRA enrollment rights exist under the American Recovery and Reinvestment Act of 2009?

Qualified individuals who initially decline COBRA coverage prior to the enactment of ARRA would be given an additional 60 days after they receive notice of the special election period to elect to receive the subsidy. The election period begins on the date of the enactment of ARRA. The special election opportunity is also available to a qualified beneficiary who elected COBRA coverage but who is no longer enrolled on the date of enactment, for example, because the beneficiary was unable to continue paying the premium. Federal COBRA law provides that a group health plan must allow an eligible individual to choose to continue with the coverage in which the individual is enrolled as of the qualifying event. However, ARRA allows group health plans to provide a special enrollment right to allow eligible individuals to elect different coverage under the plan in electing COBRA continuation coverage. Further, even though the premium subsidy is only for 9 months, the different coverage elected must generally be permitted to be continued for the applicable required period (generally 18 months or 36 months, absent a COBRA terminating event).

How is the subsidy under the American Recovery and Reinvestment Act of 2009 administered?

The subsidy is generally administered as a reimbursement. The entity to which premiums are payable will be reimbursed by the amount of the premium for COBRA coverage that is not paid by an eligible individual on account of their 65 percent premium reduction. An entity is not eligible for subsidy reimbursement, however, until it has received the reduced premium payment from the eligible individual. The entity to whom the federal reimbursement is payable is either (1) the multiemployer group health plan, (2) the employer maintaining the group health plan subject to federal COBRA, or (3) the insurer providing coverage under an insured plan. The entity that is eligible for reimbursement may elect to offset its payroll taxes for purposes of reimbursement. To the extent that such entity has liability for income tax withholding from wages or FICA taxes with respect to its employees, the entity is reimbursed by treating the amount that is reimbursable to the entity as a credit against its liability for these payroll taxes. That is, the credit for the reimbursement is treated as a payment of payroll taxes. Any reimbursement for an amount in excess of the payroll taxes owed is treated in the same manner as a tax refund. Entities wishing to claim reimbursements will be required to file certain reports, including an attestation of the involuntary termination of employment of each covered employee for which reimbursement of premiums is claimed.

What is the effective date of the COBRA subsidy under the American Recovery and Reinvestment Act of 2009?

These provisions are effective for periods of coverage beginning after the date of the enactment of the Act. For group health plans using calendar months as the period of coverage, the subsidy applies beginning March 1, 2009. Additionally, eligible individuals who pay 100 percent of the premium required for COBRA for any month during the first 60-day coverage period after enactment will be reimbursed.

Is the COBRA subsidy under the American Recovery and Reinvestment Act of 2009 retroactive?

Although the subsidy is available to employees who were terminated starting September 1, 2008, the subsidy itself is not retroactive. It will apply only to periods of coverage beginning on or after March 1, 2009.

Does the COBRA subsidy under the American Recovery and Reinvestment Act of 2009 still apply in cases where the group health plan charges the eligible individual less than the maximum permissible COBRA premium?

The Act requires that the individual eligible for the COBRA subsidy (or someone other than the employer on the eligible individual's behalf) must pay 35% of the premium and that the employer cannot claim a subsidy credit until the group health plan has actually received the 35% of the COBRA premium as required by the Act. Therefore, an

employer may only claim a subsidy of 65% of what the total premium would be if the amount paid by the eligible individual was 35% of the total COBRA premium.

What are the notice requirements under the American Recovery and Reinvestment Act of 2009?

COBRA notices must include information on the availability of the premium assistance and must be provided to all individuals who terminated employment during the applicable time period, not just to individuals who were involuntarily terminated. The Department of Labor has 30 days after the enactment of ARRA to issue model notices. Within 60 days after the enactment of the Act, group health plan administrators must provide notices to all assistance eligible individuals who currently have COBRA continuation coverage to advise them of both the availability of the subsidy and what the requirements are to qualify for the subsidy, and they must also provide notices to individuals who are entitled to the special enrollment period.

What compliance actions should be taken now in response to COBRA subsidy allowed under the American Recovery and Reinvestment Act of 2009?

- Review records to identify employees who were involuntarily terminated from employment since September 1, 2008;
- Update COBRA materials to comply with the new requirements;
- Determine whether to permit individuals to elect a different health plan option when electing COBRA coverage;
- Review severance policies to revisit issue of any employer COBRA premium contributions;
- Notify the appropriate individuals of their new rights and responsibilities under the Act;
- Develop processes and procedures for the administration of the COBRA subsidy; and
- Keep informed about the status of soon to be released model forms and regulations.

This Kinloch Consulting Group, Inc. Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

Content copyright © 2000, 2008 Zywave, Inc. Images copyright © 2000-2004 Getty Images, Inc. All rights reserved.