



## **New Employer Obligations for COBRA Under the American Recovery and Reinvestment Act of 2009**

The 2009 stimulus bill outlined changes to the nature of COBRA coverage for terminated employees. As you know, COBRA is a federal law that allows former employees and their families to retain group health coverage, generally for 18 months, after experiencing a “qualifying event,” such as a loss of employment or a reduction of hours. Group health plans under COBRA are defined broadly and include not only medical plans, but also dental, vision, prescription drug, health flex spending accounts, health reimbursement arrangements and certain wellness and employee assistance plans. Under COBRA, if the former employee or his/her qualified beneficiaries desire to continue coverage through COBRA, the employee or qualified beneficiary is required to pay the full cost of the monthly premium.

As a result of the Act, employer obligations have changed in two significant ways – (1) the premium for continuation coverage and (2) a new window that will permit certain qualified beneficiaries who are not currently on COBRA to elect the coverage. The subsidy changes also apply to “small employers” who are not subject to COBRA, but who must comply with state continuation law.

### **Subsidy for COBRA Coverage**

Employers are required to provide qualified beneficiaries with COBRA coverage if the beneficiary pays 35% of the monthly premium. For example, if the cost of employee coverage is \$300 per month, the qualified beneficiary has to pay only \$105 to retain COBRA coverage.

If the employee or qualified beneficiary is eligible for the premium subsidy, the employer is obligated to pay the remainder of the COBRA coverage (in our example, the employer would be responsible for \$195 of the monthly premium). Employers who pay the subsidy are permitted to a credit against its obligation to withhold and remit payroll taxes).

The obligation to pay the subsidy begins with coverage starting on March 1 if your plan is an insured plan. The subsidy applies only to qualified beneficiaries who lose coverage due to *involuntary* termination of employment between September 1, 2008 and December 31, 2009. It appears that loss of coverage due to death or reduction in hours are not eligible for the subsidy. Layoffs have not been discussed in the Act, though it would be safest to treat a layoff as a termination.

The premium subsidy is available for 9 months, unless the beneficiary becomes eligible for Medicare or is able to participate in another group health plan. The subsidy does not extend COBRA coverage beyond the normal 18-month period.

The subsidy paid by the employer is not taxable as income to the employee or other qualified beneficiaries.



Plan administrators must give eligible qualified beneficiaries notice of the availability of the subsidy and must inform the qualified beneficiary that they must give timely written notice of the availability of other coverage that may cut off the subsidy. Model notices are expected to be available soon.

### **Special Enrollment Window**

The special enrollment window applies to qualified beneficiaries who lost coverage on or after September 1, 2008 due to involuntary termination and who did not timely elect COBRA coverage or who dropped the coverage.

Employers are required to give eligible individuals notice of a new election window -- which must last 60 days from the date of the notice. Model notices are expected to be available soon.

If a qualified beneficiary elects coverage during this special enrollment period, the coverage begins on March 1. However, this new enrollment will not extend the maximum COBRA coverage period based on the original qualifying event. If a beneficiary elects coverage during the special enrollment period, he/she would still be eligible for the 65% premium subsidy.

### **What Should Employers Do?**

- Identify the qualified beneficiaries who need to receive notice of the premium subsidy. Prepare and send out notices announcing the premium subsidy and provide the necessary information.
- Identify the qualified beneficiaries who are eligible for the special election window. Prepare and send out the Notice offering COBRA coverage, including the premium subsidy.
- Consult with your benefits and payroll staff to coordinate information to ensure the company gets timely credit against federal payroll taxes for the subsidized COBRA premiums. Consult with legal counsel if you have further questions.

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For assistance with an aspect of employment law, please contact Attorney Sally A. Piefer at (262) 754-1325 or [sap@tsglaw.com](mailto:sap@tsglaw.com) in our Employment Law Group. We welcome your comments and questions.

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**The Schroeder Group, S.C.  
Attorneys at Law**  
Crossroads Corporate Center  
20800 Swenson Drive  
Suite 475  
Waukesha, WI 53186

**Main Phone**  
(262) 798-8220  
(800) 372-3020

**Facsimile**  
(262) 798-8232

**Direct Phone**  
(262) 754-1325

**E-Mail**  
[sap@tsglaw.com](mailto:sap@tsglaw.com)

[www.tsglaw.com](http://www.tsglaw.com)