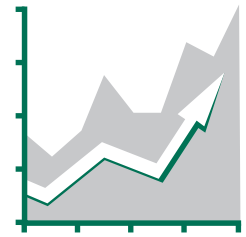


Financial Adviser

COBRA Subsidy for Involuntarily Terminated Employees



The American Recovery and Reinvestment Act (ARRA) has many provisions that effect the day-to-day operation of businesses. Some changes that were effective March 1, 2009 revise the way COBRA (Consolidated Omnibus Budget Reconciliation Act) must be administered.

Premium Subsidy

The federal government will subsidize 65 percent of Assistance Eligible Individuals (AEIs) premiums from March 1 - December 31, 2009. Only COBRA premiums actually paid by participants are eligible. If employers subsidize COBRA, those portions are not included. All group health plans are eligible for this COBRA subsidy except a flexible spending account (FSA).

By mid-April, employers were required to send new COBRA notices (DOL.gov) to Assistance Eligible Individuals who were terminated since September 1, 2008. They may have a second chance to elect the coverage effective March 1, 2009. Those former employees have 60 days from notification to elect COBRA.

By mid-April, current COBRA participants who are Assistance Eligible Individuals also must have received information about the government's subsidy of their premiums.

Who are Assistance Eligible Individuals (AEIs)?

It's not always clear which former employees are eligible for the subsidy. Former employees and their dependents may be entitled to COBRA coverage yet not be entitled to the 65-percent federal subsidy.

Some terminations are clearly eligible:

- Reduction in force
- Layoffs/Temporary or permanent
- Lockout by employer
- Poor performance or misconduct firing

Some terminations are clearly not eligible:

- Voluntary Quit or Retirement/ No extenuating circumstances

- Death of employee/Dependents not eligible
- Divorce/Dependents not eligible
- Strike
- Absence due to illness or disability
- Gross Misconduct firing — not eligible for COBRA

Facts and Circumstances for Determinations:

- Severance Agreements/Why signed?
- Quits/if it's the result of a "material negative change" in employment
- Retirements to avoid announced layoffs of others

What Should You Do if You Are Unsure Whether Someone is an Assistance Eligible Individual?

Most experts advise sending them the COBRA notice so that the 60-day clock is running. If they do elect COBRA, you will need to decide if they are eligible for the subsidy. If you rule that they are not eligible for the subsidy, they may appeal to the Department of Labor. If participants receive the subsidy in error, they must repay it and a 10-percent penalty.

Reimbursement

Employers may reduce their federal payroll tax deposits by the 65-percent government subsidy once Assistance Eligible Individuals have paid 35 percent of the premiums. The COBRA subsidies will be reported each quarter when the Form 941 Payroll Tax Return is submitted. The revised Form 941 is available at www.IRS.gov.

Documentation Requirements

Employers must create a listing of all employees terminated between September 1, 2008 and December 31, 2009 that includes the reason for the termination, in addition to all of the COBRA notice dates. This documentation must be maintained to prove that all participants receiving the subsidy are Assistance Eligible Individuals. Written records will be vital in cases where

"facts and circumstances" determinations have been applied.

Duration of Subsidy

The subsidy is available for a limited time. When the participant becomes eligible for another health plan or Medicare, the subsidy ends. The participant must notify your plan in writing if he or she becomes eligible for another group health plan or Medicare.

Overpayment by Assistance Eligible Individuals

Because these new regulations took effect quickly on March 1, 2009, some COBRA participants may have paid full premiums even though they are eligible for the subsidy. The employer may reimburse the individual or apply the overpayment as a credit to future premium payments. Credits must be applied within 180 days.

These COBRA revisions are complicated and will take extra time by your staff to examine and execute. If you have any questions about the changes to COBRA or need help in applying these new rules, contact Ruth Shindledecker, MBA, SPHR, CEBS, at McGill, Power Bell & Associates at 814/724-5890 or rshindledecker@mpbcpa.com

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