



## COBRA PREMIUM ASSISTANCE SUBSIDY UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT

by Cheri D. Green

The American Recovery and Reinvestment Act [ARRA] was signed into law on February 17, 2009. The ARRA modifies COBRA coverage for employees who are involuntarily terminated between September 1, 2008 and December 31, 2009.

For purposes of determining whether a COBRA premium subsidy is available under a plan, the ARRA provides that continuation coverage applies to ERISA plans, enrollees under Public Health Service Act, enrollees under the Federal Employee Health Benefit Plan and plans covered under a State program that provide comparable continuation coverage. In order to qualify for this premium subsidy, the individual must be an "assistance eligible individual" ("AEI"). An "AEI" is an employee or a member of his/her family who is a COBRA "qualified beneficiary" who has been involuntary terminated at any time between September 1, 2008 and December 31, 2009.<sup>1</sup>

The premium subsidy provides that the employer is to pay 65% of the COBRA/continuation premium. Thus, the AEI is responsible for 35% of the plan premium. In the event the AEI opts for the COBRA premium subsidy, the employer will be entitled to an offset of its payroll tax liability for the 65% of the premium paid. In the event the offset of payroll tax does not cover the 65% premium subsidy, the ARRA provides that the treasury will make up the difference by providing for tax credits or refunds.

The premium subsidy for an individual may last up to 9 months, but will end earlier if 1) the AEI becomes eligible for other group coverage (including a plan offered by a new employer or a spouse's employer); 2) the AEI becomes eligible for Medicare or 3) when the maximum period of COBRA coverage ends for the AEI, whichever occurs first.

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<sup>1</sup>The premium subsidy does not extend to those who are otherwise eligible for COBRA coverage as a result of divorce, reduction of hours, dependent status change or other qualifying events other than involuntary termination.

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There is a special enrollment period for AEIs who declined COBRA coverage after September 1, 2008, or accepted it and later dropped it because they could not afford the premium. The ARRA provides that the involuntarily terminated employee is to be provided another opportunity to enroll for the premium reduction. However, the premium reduction is not retroactive. If the involuntarily terminated employee opts for the COBRA premium reduction, it will take effect as of February 17, 2009. This second enrollment opportunity however does not extend the ultimate COBRA eligibility time period (generally between 18 and 36 months). The special enrollment period does not apply to plans with less than 20 employees (those subject to State mini-COBRA).

The ARRA further provides that even if the COBRA premium subsidy is paid by someone other than the involuntarily terminated employee, the employer must accept that premium and is responsible for its 65% share. That is, even if a parent, guardian, State agency or charity pays the premium, the employer is responsible for the 65%. In addition to the actual involuntarily terminated employee being eligible for the COBRA premium subsidy, so are all of those dependents under the Plan. Accordingly, a involuntarily terminated employee can continue family coverage on behalf of himself/herself and family.

When the AEI is no longer eligible for the COBRA premium subsidy due to eligibility for coverage under another group plan (a new employer or coverage under a spouse's plan) or Medicare, for example, they must notify the employer/Plan that they are no longer eligible. The notice must be in writing and provided in the time and matter that the Department of Labor is to specify (at the time, that time and manner has not been set forth). The penalty for the AEI who fails to notify the employer/Plan that he/she is no longer eligible for the COBRA premium subsidy is 110% of the premium subsidy.

As one can imagine, the COBRA premium subsidy provision will generate a massive paperwork nightmare for employers and their human resource department. In particular, HR departments should begin its review of terminated employees from September 1, 2008 to determine: the nature of termination; whether COBRA coverage was requested and notify them of the premium reduction; and, whether COBRA was declined and the need to notify them of the new COBRA premium reduction program. The HR department will then need to work with the accountant to set up protocols for maintaining the mandatory documents for the 65% premium payment payroll tax credit and/or otherwise reimbursement from the

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U. S. Treasury.<sup>2</sup> In particular, according to the IRS, the employer will have to maintain the following documents to claim the credit:

- “1. Information on the receipt, including dates and amounts, of the AEIs’ 35% share of the premium.
2. In the case of an insured plan, copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier required under COBRA.
3. In the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the AEI.
4. Attestation of involuntary termination, including the date of the involuntary termination (which must be during the period of 9/1/08-12/31/09) for each covered employee whose involuntary termination is the basis of eligibility for the subsidy.
5. Proof of each AEI’s eligibility for COBRA coverage at any time during the period from 9/1/08-12/31/09, and election of COBRA coverage.
6. A record of the SSN’s of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for 1 individual or 2 or more individuals.
7. Other documents necessary to verify the correct amount of reimbursement.”

In short, a lot of changes are on their way. As employers and employees attempt to maneuver through the rules and regulations, we expect the Department of Labor, the Treasury and the Internal Revenue Service to offer guidance. If you have any questions, please contact Cheri Green at (601) 960-6864 or [cgreen@brunini.com](mailto:cgreen@brunini.com) or other members of Brunini’s Health Care Law Group.

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<sup>2</sup>The IRS has already modified the Employer’s Quarterly Federal Tax Return Form 941 and developed a list of paperwork the employer will need to maintain for verification.