



## Voluntary vs. Involuntary Terminations for COBRA Premium Assistance Purposes

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*Foster Swift Employment, Labor & Benefits E-News*

April 17, 2009

The American Recovery and Reinvestment Act of 2009 (ARRA) provides for a 65% reduction in the premium otherwise payable by certain involuntarily terminated individuals and their families who elect COBRA continuation coverage. Employees facing other qualifying events are not eligible for the subsidy.

All former employees who are involuntarily terminated between September 1, 2008 and December 31, 2009, must be given a notice of the right to purchase continuation coverage with the COBRA premium assistance. However, determining whether a termination was voluntary or involuntary is not always easy. IRS Notice 2009-27 (<http://www.irs.gov/pub/irs-drop/n-09-27.pdf>) offers some guidance in this area.

An involuntary termination is a severance from employment due to the independent exercise of unilateral authority of the employer, where the employee was willing and able to continue performing services. An involuntary termination cannot be due to the employee's implicit or explicit request. Examples of an involuntary termination include the following:

- An employer fails to renew a contract at the time the contract expires, if the employee was willing and able to execute a new contract providing terms and conditions similar to those in the expiring contract
- An employee resigns due to employer action that causes a material negative change in the employment relationship for the employee
- An involuntary reduction to zero hours, such as a lay-off, furlough, or other suspension of employment
- An employee resigns because the employer would have terminated the employee's services otherwise, and the employee had knowledge that he or she would be terminated

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- An employee's retirement if, absent retirement, the employer would have terminated the employee's services, and the employee had knowledge that he or she would have been terminated
- A lockout initiated by the employer
- An employer's action to end an individual's employment while the individual is absent from work due to illness or disability

An involuntary termination *does not* include:

- The death of the employee
- The employee's absence from work due to illness or disability
- A reduction in hours that is not a reduction to zero hours, or that was initiated by the employee
- A work stoppage as the result of a strike initiated by employees or their representatives
- An employee's ordinary resignation

Employers may encounter a situation where a former employee insists that he or she was involuntarily terminated, while the employer feels the termination was voluntary. The ARRA includes a process for expedited review of these cases. Such review is provided either by the Department of Labor or the Department of Health and Human Services, depending on the type of group health plan involved. The Department of Labor will prepare an application form for expedited review. A determination as to whether a termination was voluntary or involuntary will be made within 15 days of the agency receiving the request for review.