



Employers Take Heed: The Stimulus Act May Affect You - Immediately!

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The American Recovery and Reinvestment Act (better known as the Stimulus Act) was enacted on February 17, 2009. For employers who are subject to COBRA, one of the most pertinent provisions in the Act states that employees who were and are involuntarily terminated between September 1, 2008 and December 31, 2009, and their dependents, may be eligible for a subsidy of the cost of COBRA benefits. The subsidy is 65% of the COBRA premium, to be paid by you for up to nine months or until COBRA coverage would otherwise end, whichever happens earlier. You are entitled to a payroll tax credit or direct reimbursement from the Department of Treasury if the subsidy amount exceeds your liability for payroll taxes.

The terminated employee must have been eligible for COBRA continuation coverage at the time of termination. COBRA exempts those employees who were involuntarily terminated due to gross misconduct from its provisions, but the case law on that issue indicates that there is a very high threshold for gross misconduct. The subsidy also is reduced for those individuals who have an Adjusted Gross Income (AGI) in excess of \$125,000 (\$250,000 for joint returns) and is not available at all for those with an AGI exceeding \$145,000 (\$290,000 for joint returns).

Employees whose employment was involuntarily terminated on or after September 1, 2008, and who failed to elect COBRA following the termination, must be given a second chance to elect COBRA coverage. This additional opportunity will extend for 60 days from the date that each employee receives from you notice of this new provision. The coverage and subsidy would extend from the first period of coverage beginning on or after February 17, 2009 (typically March 1, 2009), but the maximum COBRA period (generally 18 months) extends from the date of the termination of employment. So, for example, if an employee terminated on October 1, 2008, were to elect COBRA on February 25, 2009, the period of coverage would begin on March 1, 2009. The subsidy could extend until November 30, 2009 (9 months

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from March 1, 2009), but COBRA coverage would end no later than March 31, 2010 (18 months from October 1, 2008).

Since this Act is already in effect, there are several steps that you need to take immediately:

1. Identify all employees involuntarily terminated since September 1, 2008.
 2. Issue a notice by April 18, 2009 to all affected former employees and their covered dependents, informing them of their rights under the new law. (Model language for this notice is to be issued by the Department of Labor by March 19, 2009).
 3. Establish procedures to track that the notice has been given and the identity of those former employees who have now decided to elect COBRA.
 4. Establish procedures to track those employees who elected COBRA at the time of the involuntary termination and identify the mechanism that will be used to refund to them (or credit to them through a reduction in future COBRA payments) the 65% subsidy for the premiums they have already paid.
 5. Establish records to track all former employees for whom you are paying, or reimbursing as the case may be, the 65% subsidy to apply for the tax credit.
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