

# Stimulus Package: COBRA Premium Assistance for Involuntarily Terminated Employees and Their Families

February 2009

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The American Recovery and Reinvestment Act (ARRA) was signed into law on February 17, 2009 and includes provisions that expand Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage for certain employees. An individual who is involuntarily terminated from employment on or between September 1, 2008 and December 31, 2009 will be entitled to premium assistance for COBRA coverage for up to nine months from the individual's former employer if the individual or any other qualified COBRA beneficiary elects COBRA continuation coverage. In the case of group health plans that charge for COBRA on a calendar month basis, this provision is effective for months of coverage beginning on or after March 1, 2009.

## COBRA Premium Assistance

If an individual is involuntarily terminated from employment (for reasons other than gross misconduct) during the 16-month period noted above, the individual may elect COBRA coverage and, for a period of up to nine months, receive a subsidy from the employer equal to 65% of the otherwise applicable COBRA premium actually charged to the former employee. To receive this premium assistance, the individual must pay 35% of the COBRA premium. If the individual declines COBRA coverage, any other COBRA beneficiary may elect COBRA coverage and be entitled to the premium assistance, provided the COBRA beneficiary pays 35% of the COBRA premium. The premium assistance applies to all group health plans subject to COBRA (except for health care flexible spending accounts) and to any health care continuation coverage required by states for small employers.

Note that if an employer subsidizes the COBRA premium, the 65% credit only applies to the amount charged to the former employee, not to the full amount of the COBRA premium (employee share plus employer subsidy).

## Government Reimburses Employer for Premium Assistance Via Payroll Tax Offset

The employer is entitled to apply the amount of premium assistance it pays as an offset against its payroll taxes. To claim this offset, the employer must file a report with the Internal Revenue Service that includes the following:

- An attestation of involuntary termination of employment for each covered employee;
- A report of the amount of payroll taxes offset for the applicable payroll tax reporting period, and the estimated offset of payroll taxes for the subsequent period; and
- A report containing the tax identification numbers (TINs) of all covered employees, the amount of subsidy reimbursed for each employee and family member, and a designation with respect to each employee as to whether the subsidy reimbursement is for coverage for one individual or two or more.

To the extent the premium assistance paid by the employer exceeds the employer's payroll taxes, the employer will be entitled to a refund from the government.

### **Income Limits on COBRA Premium Assistance**

The stimulus package limits the extent and duration of the premium assistance and includes an income threshold as a condition of receiving the premium assistance:

- An individual is entitled to the premium assistance for nine months or, if earlier, until the date the individual becomes eligible for other employer-sponsored health care coverage or Medicare. Individuals who fail to notify an employer that they are no longer eligible for the subsidy will be liable to the federal government for the amount of premium assistance paid during the time of ineligibility plus a 10% penalty.
- The premium assistance is phased out for taxpayers with modified adjusted gross income (AGI) for the taxable year of premium assistance that exceeds \$125,000 (\$250,000 for taxpayers filing jointly). An individual is not entitled any premium assistance if the individual's modified AGI for the taxable year in which the premium assistance is received exceeds \$145,000 (\$290,000 for taxpayers filing jointly).
- An individual who accepts premium assistance from the employer and who has modified AGI for the taxable year that exceeds the applicable income threshold must repay the premium assistance. However, the individual repays the premium assistance to the federal government, not the employer, since the federal government indirectly subsidizes the premium assistance through the payroll tax offset/refund.

An individual who is certain that the modified AGI limit prevents the individual from being entitled to premium assistance for any coverage period may decline the subsidy for all coverage periods and avoid being subject to the recapture tax.

### **Special Election Period for COBRA Premium Assistance**

Employers must provide a special election period for any individuals who were involuntarily terminated from employment on or between September 1, 2008 and February 17, 2009, and who failed to elect COBRA initially. Employers must give these individuals a 60-day period to elect COBRA and receive the premium assistance, beginning on the date that they receive notice of their rights to make the second election. Although the period of premium assistance applies prospectively from March 1, 2009, the maximum 18-month COBRA continuation period for these individuals is still measured from their date of the termination of employment, not from the date they elect COBRA. Notices of the special election period must be distributed no later than April 18, 2009 (60 days after enactment of the law).

### **Notice Requirements**

Employers are required to notify individuals of the availability of premium assistance. Model notices are expected to be released within the next 30 days. The notice must include:

- Forms necessary for establishing eligibility for premium assistance;
- The name, address, and phone number of the plan administrator and any other person with information on the premium assistance;
- A description of the special election period and the obligation of individual to notify the plan if they no longer qualify for the premium assistance;
- A description of the right to premium assistance and any conditions (displayed in a prominent manner); and

- A description of the option, if any, to enroll in other health care coverage offered by the employer with the same or lower premium.

An employer is permitted to amend the existing COBRA election notice or provide a separate document describing the premium assistance. The notices must be distributed to all individuals who terminated employment during the applicable time period, not just to individuals who terminated employment involuntarily.

### **COBRA Participants on Date of Enactment Who Are Entitled to Premium Assistance**

Individuals who have already elected COBRA on the date of enactment and would be entitled to premium assistance must receive a notice of their right to premium assistance. For any individual who is paying more than 35% of the COBRA premium during the period between the effective date (March 1, 2009) and the date the notice is sent, an employer may, until April 18, 2009, choose either to reimburse the individual for any excess payment within 60 days of receiving the full premium payment or provide a credit against their future premium payments. If the employer chooses to provide a credit, the excess credit must be used within 180 days of the date the full premium payment is received. The employer must reasonably believe that the credit will be used within the 180-day period. Otherwise, the employer must reimburse the individual.

### **More Information**

For more information, please contact your local Hewitt Consultant.