



Economic Stimulus Act/COBRA Premium Assistance Immediate Employer Action Required

Employment, Labor & Benefits Practice Group

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PRACTICE AREAS

Employee Benefits

Health Care

The American Recovery and Reinvestment Act of 2009 was enacted on February 17, 2009. The Act established a 65% health insurance premium subsidy for employees who are covered under a group health plan that is subject to COBRA and are involuntarily terminated during the period beginning September 1, 2008 through December 31, 2009. The 65% premium subsidy is reduced for taxpayers with an AGI of \$125,000 (\$250,000 in the case of a joint return) and is not available for taxpayers with a modified AGI that exceeds \$145,000 (\$290,000 in the case of a joint return). A summary of the provisions of the premium subsidy program follows.

- An individual is eligible for premium subsidy assistance for periods of COBRA health coverage beginning on or after February 17, 2009, if the individual:
 1. is eligible for COBRA continuation health coverage at any time during the period that begins September 1, 2008 and ends December 31, 2009;
 2. timely elects COBRA continuation coverage as described below; and
 3. has an involuntary termination of the individual's covered employment between September 1, 2008 and December 31, 2009.
- The subsidy assistance will be available for periods of coverage beginning on or after February 17, 2009 (for most plans, this will be March 1, 2009).
- On or before April 18, 2009, employers are required to give a prominent notice to employees who are eligible for the premium subsidy but did not previously elect COBRA coverage. The U.S. DOL is expected to publish a model notice by March 19, 2009 for this purpose. Forward your email address to ssstein@fosterswift.com if you would like a copy of the notice.



- Employees who are eligible for the subsidy but did not elect COBRA coverage will have a second 60-day election period to enroll in COBRA coverage. The election period begins on February 17, 2009, and ends 60 days after the date the employee is notified of the special election.
- If elected, the COBRA coverage period generally begins retroactive to March 1, 2009 (or if later, the month in which the subsidy is claimed), and will continue until the earlier of (i) the expiration of the 9-month subsidy period, or (ii) the expiration of the maximum period of coverage if COBRA had been elected.
- The employer may offer an enrollment option that permits the individual to enroll in alternative health coverage during a special 90- day enrollment period.
- The employee will pay 35% of the COBRA premium, and the employer is then reimbursed by the federal government for the remaining 65% of the premium through a credit against payroll taxes, or a refund of the overpayment of payroll taxes.
- Certain health coverage, including stand alone dental and vision plans and health FSAs are not eligible for the premium assistance subsidy.

Please contact your employee benefits counsel at Foster Swift with any questions.