



# COBRA &

## The American Recovery and Reinvestment Act of 2009 (ARRA)

President Obama signed a \$787 billion economic stimulus package on February 17, 2009 that has immediate implications for employers. The No. 1 goal of the more than 1,000-page package is to save and/or create three million U.S. jobs. For employers, it means that COBRA compliance is now more difficult than ever before.

The Stimulus Bill provides massive government subsidies for COBRA coverage for “assistance eligible individuals” which generally includes any COBRA “qualified beneficiary” who meets each of the following criteria:

- is involuntary terminated from employment during the period beginning September 1, 2008 and ending December 31, 2009.
- is eligible for COBRA continuation coverage between September 1, 2008 and December 31, 2009.
- elects COBRA coverage when first offered or during the additional election period granted by the new regulation.

These rules apply not only to employees but also to their dependents that lost coverage under a group health plan due to involuntary termination.

The economic recession has resulted in millions of unemployed Americans. And as employment goes, so does health insurance. In recognition of that fact, the ARRA provides a government subsidy equal to 65 percent of COBRA premiums for what it terms “assistance eligible individuals.” Government’s goal is to keep the unemployed from becoming uninsured. The subsidy is available for a maximum of 9 months and begins on the first coverage period on or after April 18, 2009. And while COBRA generally applies to employers with 20 or more employees, the subsidy is also available to State Continuation coverage, which applies to even the smallest employers in a number of states that have adopted such requirements. Texas is among those states.

Employers that sponsor group health plans must “front” the 65 percent subsidy and in turn, may recover the subsidy, on a dollar for dollar basis, as a credit to their 941 payroll tax deposits. Employers must also account for the subsidy on their quarterly 941 payroll tax returns and face liability for any subsidy granted to ineligible employees.

The term “assistance eligible employee” is a broad term that includes essentially all involuntarily terminated employees other than those that were terminated for “gross misconduct” and those that voluntarily quit their employment. One unique provision of the new law is that it gives a second chance to employees that were involuntarily terminated between September 1, 2008 and February 16, 2009 yet declined COBRA coverage when it was originally offered. These former employees are entitled to a second chance to enroll in COBRA in light of the newly available subsidy and were to be offered another 60 day election period starting on or before April 18, 2009. Many employers will find themselves having to retroactively grant the subsidy for months already passed in order to grant the full 9 months of subsidy available under the new law. And the challenge does not end with employees but rather extends to their dependents as well. Under COBRA, dependents that were covered at the time of an employee’s termination are considered qualified beneficiaries. They are entitled to the subsidy as well and may be entitled to certain notices regarding their eligibility for the subsidy.

In short, this is possibly the most complex employer regulation in decades and is particularly challenging for small businesses that don’t have the luxury of a Human Resources department. There is little doubt that a large number of business owners are unaware of these new regulations and as such, are now well past the deadline for making the required notices to employees. **There are significant penalties for non-compliance and the clock is ticking.**



# Steps You Need to Take to be Compliant

## Current COBRA Continuant

☐ Identify employees who experienced an involuntary termination (other than gross misconduct) between September 1, 2008 and present (through December 31, 2009). These are assistance eligible employees (AEI).

☐ AEIs should have been notified of subsidy eligibility on or before April 18, 2009. <sup>1</sup>**Click here for a model notice, as defined by the U.S. Department of Labor.** If the April 18 notification deadline was not met, notifications should be provided as soon as possible.

☐ Each AEI should be required to complete a subsidy eligibility attestation to mitigate tax implications for Employers. Attestations should be retained for a minimum of 7 years along with other COBRA-related documents. AEIs must be notified that the subsidy will end upon their eligibility for other group health coverage, including Medicare.

☐ Employers may recover the subsidy by taking a credit on their 941 payroll tax deposits, but only after receipt of each continuant's 35% contribution.

## Non-elected Involuntary Terminations

☐ Identify AEIs who experienced an involuntary termination (other than gross misconduct) between September 1, 2008 and present (through December 31, 2009) but did not initially elect continuation coverage.

☐ These AEIs should have been notified of subsidy eligibility on or before April 18, 2009. <sup>2</sup>**Click here for a model notice, as defined by the U.S. Department of Labor.**

☐ Each AEI should be required to complete a subsidy eligibility attestation to mitigate tax implications for Employers. Attestations should be retained for a minimum of 7 years along with other COBRA-related documents.

☐ AEIs must be provided a new 60-day COBRA election period on or before April 18th. The new 60-day election period begins as of the actual date of the notice.

☐ If an AEI elects during second election opportunity, he/she must also be notified that the subsidy will end upon their eligibility for other group health coverage, including Medicare.

☐ Employers may recover the subsidy by taking a credit on their 941 payroll tax deposits but only after receipt of each continuant's 35% contribution.

## Future Involuntary Terminations

☐ AEIs should be notified of subsidy eligibility upon their initial COBRA notification. <sup>3</sup>**Click here for a model notice, as defined by the US Department of Labor.**

☐ Each AEI should be required to complete a subsidy eligibility attestation to mitigate tax implications for Employers. Attestations should be retained for a minimum of 7 years along with other COBRA-related documents.

☐ Employers may recover the subsidy by taking a credit on their 941 payroll tax deposits, but only after receipt of each continuant's 35% contribution.

### Caveats

- Although the Act contains income limitations for subsidy eligibility, employers have been advised not to consider these income requirements when determining subsidy eligibility. Individuals who receive the subsidy but exceed the income limitations will be required to repay the subsidy when filing their federal income tax return.
- The subsidy can't be applied until the COBRA continuant has paid their portion (35%). If the continuant's portion is not paid timely, the subsidy need not be applied and COBRA coverage may be cancelled for non-payment.
- Voluntary quits and terminations for gross misconduct are not considered involuntary terminations for purposes of subsidy eligibility.

To download a PDF of the above notices, please visit the following Web sites.

1. <http://www.odysseyonesource.com/cobra/pdfs/NoticeA.pdf>
2. <http://www.odysseyonesource.com/cobra/pdfs/NoticeB.pdf>
3. <http://www.odysseyonesource.com/cobra/pdfs/NoticeC.pdf>

## Or You Could Contact Us

Complying with new COBRA regulations can be a daunting task for employers. If you want to rid yourself of this and other compliance tasks, consider Odyssey OneSource. We offer the most comprehensive HR outsourcing solution available. To learn more, call (866) 508-7361 or visit [www.odysseyonesource.com/ContactUs/](http://www.odysseyonesource.com/ContactUs/). Go to <http://www.dol.gov/ebsa/cobra.html> for the Department of Labor's COBRA fact sheet.