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COBRA has taken on new bite in today's pro-labor climate

Houston Business Journal - by [Carl Kleimann](#) Special to Houston Business Journal

For most business owners, today's biggest worry is the economy. Those who have seen their share of economic cycles, however, know that things will rebound. They always have. But even then, it won't be "business as usual" for employers. We have entered a pro-labor era that is sure to trouble employers even in the best economy.

The new federal administration already has enacted sweeping changes to employment laws. The appointment of labor activist Hilda Solis as our 25th Secretary of Labor, passage of the Lilly Ledbetter Fair Pay Act and promotion of the Employee Free Choice Act make it clear that employers — particularly small businesses which traditionally struggle with government compliance — are in for a long, bumpy ride.

Human resource professionals, labor attorneys and small business owners are working feverishly to keep up with these changes.

This is the first in a series of articles to help employers understand and comply with new regulations coming out of Washington, D.C.

First on the list: Unprecedented government subsidies for COBRA (Consolidated Omnibus Budget Reconciliation Act) coverage under the American Recovery & Reinvestment Act, also known as the stimulus bill.

Most business owners think of the stimulus bill as a means to stimulate our economy so they can grow their businesses and access new funding sources. A closer look, however, reveals some downsides. For example, employers now bear the brunt of the complex and time-consuming administrative tasks required to deliver unprecedented government subsidies to pay for health insurance for unemployed workers.

COBRA was passed in 1986 as a way to prevent the unemployed from becoming uninsured while out of work. The problem is that, in many cases, unemployed workers can't afford the premiums. The stimulus bill aims to help unemployed workers pay for coverage by providing a government subsidy equal to 65 percent of COBRA premiums.

While the COBRA subsidy is a generous offer on the government's part, it requires significant administration. Employers are responsible for determining who qualifies for the subsidy,

notifying those who are eligible, collecting the employee's share of the premium, funding the government's share, then recouping the government's share through a credit to their federal payroll tax (941) liabilities. Employers also are required to account for the subsidy on their quarterly 941 payroll tax return. If the subsidy exceeds the employer's federal payroll tax liability, the employer must file for a refund.

Starting with the first coverage period on or after Feb. 17, 2009, employers must:

- Inform all COBRA-eligible employees that were involuntarily separated from employment between Sept. 1, 2008, and Dec. 31, 2009, of their eligibility for the subsidy;
- Renotify COBRA-eligible employees who were involuntarily separated on or after Sept. 1, 2008, who declined COBRA coverage prior to the availability of the subsidy;
- Grant renotified COBRA-eligible employees an additional 60 days to elect COBRA in light of the new subsidy; and
- Ensure each COBRA-eligible employee and/or their qualified beneficiaries receive the 65 percent subsidy for up to nine months.

You don't have to be an HR expert to recognize the workload that this places on employers. And while COBRA applies only to employers with 20 or more employees, the subsidy applies to State Continuation coverage as well, which includes even the smallest employers in Texas and other states where it has been adopted.

For additional details, visit [www](http://www.odysseyonesource.com)

[.odysseyonesource.com/COBRA](http://www.odysseyonesource.com) or consult your employee benefits adviser.

Complicated enough? Unfortunately, this is just the tip of the iceberg. Watch for my next article to learn how the Lilly Ledbetter Fair Pay Act dramatically increases employers' liability for claims related to discriminatory compensation practices and what you can do to protect your business.

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