



COBRA Subsidy Part 2 - Government Releases Guidance

One month ago, the President signed the American Recovery and Reinvestment Act of 2009 (ARRA), which provides a COBRA premium subsidy to certain individuals. Individuals eligible under the ARRA are only required to pay 35% of the COBRA premium. The 65% subsidy will be reimbursed by means of a payroll tax credit to the employer.

The Internal Revenue Service (IRS) and the United States Department of Labor (DOL) recently released additional guidance related to the COBRA subsidy provisions. This advisory summarizes the guidance from the government.

Internal Revenue Service

The IRS issued a News Release and a Questions and Answers (Q&A) in response to the ARRA. The IRS also issued a revised Form 941-Employer's Quarterly Federal Tax Return, which is where employers who are entitled to reimbursement for the subsidy take the credit to reduce their employment tax liability.

Form 941 – Receiving Credit for Subsidy

The revised Form 941 must be used for the quarterly return due on April 30, 2009. Revised Form 941 is now

posted on the IRS website. The credit for the COBRA subsidy payment is claimed on Line 12a. The number of Assistance Eligible Individuals (AEIs) provided with the subsidy is reported on Line 12b.

The IRS states that the credit may be claimed only after the 35% premium payment is received from the individual. Consequently, the first quarter Form 941 may not be able to reflect the full subsidy that will ultimately apply to March. The March credit may have to be reported and applied on a later Form 941.

Supporting Documentation

The IRS states that no additional information related to the COBRA subsidy must be submitted to the IRS with the Form 941. However, the IRS provides a list of supporting documentation that must be maintained for the credit claimed. This documentation includes, but (as the IRS notes) is not limited to:

- Documentation of the receipt of the AEI's 35% share of the premium;
- In the case of an insured plan, a copy of the invoice or other supporting statement from the insurance carrier and proof of



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timely payment of the full premium to the insurance carrier required under COBRA;

- In the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the AEIs;
- Attestation of involuntary termination, including the date of the involuntary termination for each covered employee whose involuntary termination is the basis of the eligibility for the subsidy;
- Proof of each AEI's election of COBRA coverage and continued eligibility for COBRA coverage at any time during the period from 9/1/08 – 12/31/09;
- A record of the social security numbers of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for one individual or two or more individuals; and
- Other documentation necessary to verify the correct amount of the reimbursement.

Eligibility for the Subsidy

The IRS guidance clarifies that an AEI can be any COBRA qualified beneficiary associated with the related employee (such as a dependent child of an employee) who is covered immediately prior to the qualifying event. Informal remarks by representatives of the Treasury and DOL indicate that they do not necessarily mean that a child born to an AEI during the subsidy period, could not be added to the coverage at the subsidized rate. They will be considering this and issuing further guidance.

Department of Labor

The DOL's website contains a Fact Sheet and Frequently Asked Questions (FAQs) about the subsidy in addition to a flyer and a job loss poster. This information can be found at www.dol.gov/ebsa/cobra.html.

Poster and Flyer

An employer may use the flyer and poster. However, there is nothing in the ARRA that requires an employer to post a flyer or job loss poster.

Notices

The ARRA requires employers to provide notices regarding the subsidy to all employees who have a qualifying event between September 1, 2008 and December 31, 2009. The DOL is required to issue model notices no later than March 19, 2009.

Both in its Fact Sheet and in its FAQs, the DOL provides that the employer must provide notices separately or along with notices they provide following a COBRA qualifying event to individuals who have a qualifying event between September 1, 2008 and December 31, 2009. AEIs who are eligible for the 60 day special election period must also receive a special election notice. The DOL provides that the notices should include any forms necessary for enrollment. However, the DOL has not yet issued model notices.

Review of Subsidy Denials

Appeals related to subsidy denials must be submitted on a DOL application form and either completed online or mailed or faxed to the DOL. The DOL states that the form will be available on its website soon.

If you have any questions about the COBRA coverage changes or any other employment law or employee benefits issue, please contact Kimberly W. Daniel or Ryan P. Waid at (804) 967-9604 or by e-mail: kdaniel@hdjn.com or rwaid@hdjn.com. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm's website at www.hdjn.com.



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