

March 2009

The American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 contained provisions that significantly change the administration, election and payment of COBRA and State Continuation benefits.

While these changes take effect as early as February 17, 2009, for most groups whose continuation coverage is on a monthly basis, the effective date will be March 1, 2009. The details and required notices will not be provided by the Federal agencies until March 19th. Because of this, the Act also states that employers have 60 days to comply with the new legislation.

Euclid will continue to monitor closely the evolution of these changes and will provide you with the guidance and support you need. In the meantime, a summary of the key points of the legislation is provided below.

Overview

The Act is designed to help employees that involuntarily lost their jobs beginning 9/1/2008 through 12/31/2009 pay for health insurance under COBRA or State Continuation coverage. This includes qualified beneficiaries:

1. that did not elect continuation coverage during their initial enrollment period,
2. those that did elect and have since voluntarily stopped making payments and;
3. those that are still currently enrolled in continuation coverage.

The ACT applies to both COBRA and State Continuation coverage. The subsidy is offset by a tax credit against the employer's wage withholdings and FICA payroll taxes.

What is the Premium Subsidy?

The federal government will subsidize 65% of the COBRA or State Continuation premium for up to 9 months. The subsidy applies to medical, dental and vision benefits (including voluntary). The subsidy is available for Assistance Eligible Individuals or AEI (explained below).

Who is an Assistance Eligible Individual or AEI?

A qualified beneficiary is considered an Assistance Eligible Individual or AEI if he or she is involuntarily terminated from employment on or after September 1, 2008 through December 31, 2009, including a dependent that makes an independent election of the involuntarily terminated employee. The Act does not define "involuntary termination"; however guidance from the Department of Labor is expected by 3/19/09.

Are there other criteria for qualifying for the subsidy?

Yes. The beneficiary must also meet the following subsidy requirements:

- o Not have access to any other medical coverage, including a spouse's group health plan or Medicare.
- o Meet the income requirements as defined in the Act. The subsidy is phased out for adjusted gross incomes above \$125,000 for single filers and \$250,000 for joint filers. Individuals with an income exceeding \$145,000 for single filers or \$290,000 for joint filers are not eligible for the subsidy. These higher

- income individuals would add the subsidy to their tax liability and therefore may not want to receive the subsidy. The federal government is developing subsidy waiver forms for this reason.
- o Not qualify for the Health Coverage Tax Credit Program under the Trade Assistance Adjustment Act.

If an AEI did elected continuation coverage initially and has paid the full premium, can they get the subsidy?

Yes, a qualified beneficiary who elected COBRA or State Continuation after an involuntary termination prior to February 17, 2009 and who meets the eligibility requirements may receive the subsidy for coverage beginning after the effective date of the ACT but the subsidy is not retroactive.

Special Election Period:

For workers who were involuntarily terminated between September 1, 2008 and February 17, 2009, the day the Act went into effect, and who did not sign up for COBRA or State Continuation, will get an additional 60 days to do so and receive the subsidy. The benefit coverage would begin the first day of the coverage period (for most groups this would be March 1, 2009) and is not retroactive to the original effective date. ***If there is a gap in coverage from the original qualifying event and the COBRA subsidized period, this will not be counted as a break in coverage for the purposes of the 63-day rule under HIPAA's portability rules.***

New Notification Period: Within 60 days of enactment, the Employer or COBRA Administrator will need to provide an additional notification to any Assistance Eligible Employee who became entitled to elect COBRA or State Continuation Coverage. These notices will be developed by the federal government by March 19th.

How do employers receive reimbursement of the 65% subsidy from the federal government?: To offset the employer's expense, the employer may take a full tax credit for its expenditures out of its payroll taxes including both income tax withholding and FICA.

What do I need to do immediately? Independently or with your COBRA or State Continuation Administrator:

- o Identify eligible beneficiaries who were involuntarily terminated on or after September 1, 2008.
- o Develop procedures to coordinate with payroll to claim the 65% payroll tax credit and a method of changing once the subsidy ends.
- o Anticipate publication of notices and guidelines for the administration of the new procedures.

Euclid will continue to provide monitor these new laws and updates on these changes. If you have any questions, feel free to reach out to a Euclid Employee Benefits representative.