



## ***IRS Issues Guidance on the New COBRA Law***

As reported earlier:

- Certain involuntarily terminated employees and their family members will only have to pay 35% of the premium amount (rather than the usual 102%) for up to 9 months to continue group health coverage. Employers will take a payroll tax credit for 65% of the premium amount.
- The employer must offer the same health coverage the individual had at the time of the qualifying event in accordance with COBRA, but may also offer other health coverage options.
- If the premium assistance is provided to high income individuals, then their income tax will be increased by the amount of the subsidy.
- Updated COBRA election notices must be provided to assistance eligible individuals who were COBRA-eligible before now by April 18, 2009. The DOL must issue a model notice by March 19, 2009. Individuals have 60 days after notice is provided to elect coverage. Coverage will not be retroactive.

The following is guidance provided by the IRS on its website.

### **Q 1: How will an employer be reimbursed for the COBRA subsidy?**

A 1: An employer can decide either to offset its payroll tax deposits or claim the subsidy as an overpayment at the end of the quarter.

The COBRA subsidy amount is claimed as a credit on line 12a of Form 941.

Line 12b must indicate the number of individuals who received the total COBRA subsidy reported on Line 12a of the Form 941. If there is no tax credit amount because no subsidy was provided, then the entry on Line 12b would be zero.

If Line 12a is larger than Line 10, Line 13 would also be larger than Line 10, resulting in an overpayment that could be applied to the next return, or requested as a refund.

See revised Form 941 at: <http://www.irs.gov/pub/irs-pdf/f941.pdf> and the revised instructions on page 6 at: <http://www.irs.gov/pub/irs-pdf/i941.pdf>

**Q 2: The employer paid the bill and took the credit for March. In April the employer finds out that the employee did not continue his/her coverage (i.e., did not pay the 35 percent). The credit element must be allowed to be a negative, which would increase the deposit due.**

A 2: The premium subsidy and the related credit for the employer apply only after the individual has paid his or her 35 percent of the premium, so this situation should not occur.

**Q 3: When more than one entity may be responsible for receiving COBRA premiums, who should claim the credit?**

A 3: The person to whom the reimbursement is payable is (1) the multiemployer group health plan, (2) the employer maintaining a group health plan that is subject to Federal COBRA continuation coverage requirements or that is self-insured, or (3) the insurer providing coverage under a plan not included in (1) or (2). Only this person is eligible to offset its payroll taxes by the amount of the subsidy.

**Q 4: What if the employer's group health plan is self-insured? Do the subsidy requirements apply?**

A 4: Yes, the subsidy requirements apply to all plans subject to the COBRA requirements, including self-insured plans. In that case, the employer must provide the COBRA coverage if the assistance eligible individual pays 35 percent of the otherwise required premium. The remaining 65 percent is treated as a payment of payroll taxes by the employer maintaining the plan.

**Q 5: What supporting documentation do employers need?**

A 5: Those claiming the credit must maintain supporting documentation for the credit claimed. Such documentation includes, but is not limited to:

- Information on the receipt, including dates and amounts, of the assistance eligible individuals' 35% share of the premium.
- In the case of an insured plan, copy of invoice or other supporting statement from the insurance carrier and proof of 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 assistance eligible individuals.
- Attestation of involuntary termination, including the date of the involuntary termination (which must be during the period from September 1, 2008, to December 31, 2009), for each covered employee whose involuntary termination is the basis for eligibility for the subsidy.
- Proof of each assistance eligible individual's eligibility for COBRA coverage at any time during the period from September 1, 2008, to December 31, 2009, and election of COBRA coverage.
- A record of the SSN's of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for 1 individual or 2 or more individuals.
- Other documents necessary to verify the correct amount of reimbursement.

For more information, visit:

<http://www.irs.gov/newsroom/article/0,,id=204708,00.html>

## **DOL Creates Website Addressing the New COBRA Law**

The DOL has created a website addressing the new COBRA law. There is no additional guidance posted at this point, but keep an eye out.

Visit: <http://www.dol.gov/ebsa/COBRA.html>

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