

COBRA PREMIUM CHANGES

As part of the economic stimulus bill recently passed by President Obama, immediate changes were made to how COBRA (Consolidated Omnibus Budget Reconciliation Act) payments should be handled. COBRA allows workers who lose their jobs the chance to purchase group health coverage provided by the employer's plan under certain circumstances.

Under the recent changes, an "eligible employee" would only pay 35% of his or her COBRA premiums for health coverage. The remaining 65% will now need to be covered by the employer, but can be reimbursed through a tax credit on the employer's payroll taxes. The company can obtain a dollar-for-dollar credit, but is having to "front" the 65% for the eligible employee until it receives this credit. This premium reduction applies to periods of health coverage beginning on or after February 17, 2009, *and can last for up to nine months*.

Who is eligible for this premium change?

Eligible individuals include an employee or a member of his or her family who:

- Elects COBRA coverage and is eligible for COBRA continuation coverage between September 1, 2008 and December 31, 2009; and
- Was *involuntarily terminated* (for reasons other than gross misconduct) between September 1, 2008 and December 31, 2009.

For employees that have already been involuntary terminated during the above time period and either did not elect COBRA coverage or are no longer enrolled in it, the new legal changes require these individuals be offered a *second chance* to elect this premium change. Such individuals will have 60 days to make a decision on these benefits after they are provided the applicable notice/election forms.

Please note that there are also special rules that limit high-income individuals from taking advantage of this premium change.

What is required and related notice issues.

Eligible individuals are entitled to notice of certain information including, among other things, a description of the premium and who is eligible for it. The date of the notice depends on the exact situation involved. For example, the required notice for a *second chance* must be distributed by **April 18, 2009**. A model notice is expected to be issued by the Department of Labor by March 19, 2009, which will be helpful if your company has not already drafted a notice.

From a practical standpoint, it is probably best to send these notices to any eligible individuals as soon as possible including on *second chance* situations to avoid the potential risk of penalties for non-compliance.

What is the effective date of the premium?

The law took effect on February 17, 2009. Thus, the subsidy begins with the first period of coverage on or after February 17, 2009 (this will usually be March 1st if your plan charges on a calendar month basis). There is no premium reduction for premiums paid for periods of coverage prior to February 17, 2009.

When does the premium end?

The premium reduction for an individual ends upon eligibility for other group coverage (*i.e.*, Medicare or other situations), after 9 months of this subsidy, or when the maximum period of COBRA coverage ends; whichever occurs first. There may be other situations where the premium could also end.

What steps you do need to take?

The Texas two step, and the second step is much harder:

Step 1: Identify everyone who is/was eligible for COBRA through an involuntary termination between September 1, 2008, and February 16, 2009, and who had not elected COBRA as of the enactment date or who elected it but lost coverage. These people will need to receive notice of this premium change since they have a *second chance*. As indicated above, the due date to send this notice is April 18, 2009.

Step 2: Identify individuals that had a COBRA qualifying event during the period from September 1, 2008 through December 31, 2009. These individuals need to be **provided notice** about the premium reduction. As the Department of Labor has indicated on its February 26, 2009 Fact Sheet, "This notice must go to all individuals, whether they have COBRA coverage or not, who had a **qualifying event**" during this timeframe.

One disconnect that may need to be addressed later on is that the notice in Step 2 appears to be to a group larger than may be **eligible for the subsidy** since the subsidy is focused on **involuntary terminations**. For instance, you can have qualifying events that are not terminations, such as a reduction in the number of hours in employment.

There are other details and changes to COBRA that have not been discussed in this alert given the complexity of these changes. Please feel free to contact us with any questions or concerns you have regarding any COBRA issues.

THOMPSON, COE, COUSINS & IRONS LABOR & EMPLOYMENT LAW SECTION

PARTNERS

- John L. Ross (214) 871-8206 jross@thompsoncoe.com
Board Certified in Labor & Employment Law and Civil Trial Law, Texas Board of Legal Specialization
- Eric J. Hansum (512) 703-5076 ehansum@thompsoncoe.com
Board Certified in Labor & Employment Law, Texas Board of Legal Specialization
- Barry A. Moscovitz (214) 871-8275 bmoscovitz@thompsoncoe.com
- Albert Betts, Jr. (512) 703-5039 abetts@thompsoncoe.com

ASSOCIATES

- Stephanie S. Rojo (713) 403-8291 srojo@thompsoncoe.com
- Derrick G. Parker (713) 403-8285 dparker@thompsoncoe.com
- Rachael Chong Walters (214) 871-8291 rwalters@thompsoncoe.com
- Jodee McCallum (651) 389-5005 jmccallum@thompsoncoe.com

The Attorneys in the Labor & Employment Section of Thompson Coe counsel public and private sector management in connection with all federal, state and local laws regulating employment. Our experienced attorneys can help clients by simplifying the employment law maze, resolving sensitive employment-related issues and reducing the risk of costly lawsuits.

www.thompsoncoe.com

Austin

701 Brazos
1500 Austin Centre
Austin, Texas 78701
t 888.708.8200
f 512.708.8777

Dallas

700 North Pearl
Twenty-Fifth Floor
Dallas, Texas 75201
t 214.871.8200
f 214.871.8209

Houston

One Riverway
Suite 1600
Houston, Texas 77056
t 713.403.8210
f 713.403.8299

Saint Paul

408 Saint Peter Street
Suite 510
Saint Paul, Minnesota 55102
t 651.389.5000
f 651.389.5099