

Are the COBRA changes under the 2009 Stimulus Act going to affect your business?

Known as the "Stimulus Bill," the American Recovery and Reinvestment Act (ARRA) was signed into law by President Obama on February 17, 2009. The \$787 billion stimulus package will have a far-reaching affect on the country's economy and for every American employer. As part of this stimulus bill, the government is providing a nine-month subsidy covering 65 percent of the COBRA premiums for "Assistance Eligible Individuals" (AEI), effective immediately for workers who were laid off between September 1, 2008, and December 31, 2009. Employers are required to provide the 65 percent subsidy, and will later receive a reimbursement from the government in the form of payroll tax reimbursements. The new COBRA subsidy poses daunting administrative challenges for employers. Failure to provide timely notice and meet the notice requirements under COBRA can lead non-compliance and civil penalties under ERISA.

Employer/Plan Administrator Action Items

Identify group health plans affected.

The Stimulus Act provides that the COBRA premium subsidy applies to all types of group health insurance plans, including fully insured, self-funded, prescription, dental, and vision subject to federal COBRA law under the Employee Retirement Income Security Act of 1974. It does not apply to health care flexible spending account plans.

Identify assistance-eligible individuals.

Employers must first know the important dates regarding AEIs and any other dates/administrative requirements under the new law. The new subsidy applies to workers, dependents of workers and beneficiaries of workers

involuntarily terminated between September 1, 2008, and December 31, 2009.

Determine if a termination of employment is involuntary.

IRS Notice 2009-27 provides guidance in this area without actually defining “involuntary termination.” Refer to the act for guidance, or contact attorney Jerry Margraf at 574-232-3538 with your questions.

Notification of extended election period under COBRA.

A group health plan was required to notify AEIs no later than April 18, 2009, who had previously elected NOT to take COBRA, that they now had a window of opportunity to reconsider and sign up for the subsidy. The extended election period began February 17, 2009, and ended 60 days after the employer or plan administrator actually provided the required notice.

Modify COBRA premium payment system.

Employers and plan administrators must be able to accept and process only 35 percent of the monthly COBRA premium paid by AEIs. The federal government will subsidize the remaining 65 percent through subsidy of payroll taxes the employer owes. An employer cannot claim the subsidy unless the AEI actually pays the 35 percent COBRA premium due for the eligible period of coverage. If the employer pays part of the 35 percent COBRA premium, subsidy of payroll taxes is available on a limited basis.

Employers and plan administrators need to develop procedures to comply with reporting obligations. They will also have to adjust COBRA procedures to:

- recognize the maximum subsidy period and determine whether to implement special coverage options.
- accept waiver of right to receive subsidy for high income earners.
- determine the impact on retiree health care coverage.

- modify COBRA procedures to reflect extended COBRA periods.

The checklist above is just that. Whether a company outsources the management of health care plans or handles them internally, make sure all the notification requirements under the Stimulus Act are being met and the plan is in compliance. A review of formal plan documents, plan descriptions and employee notices should also be completed to determine if changes are necessary due to other recent changes in laws like Michelle's Law, 2009 changes in the Mental Health Parity Act and the Children's Health Insurance Program Reauthorization Act. Contact Attorney [Jerry Margraf](#) by email or call **574-232-3538** with questions about compliance. To learn more visit the [South Bend law firm](#) Web site of Tuesley Hall Konopa, LLP.



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Disclaimer

This article is for informational purposes only and should not be relied upon as legal advice, neither is it intended to be a comprehensive explanation of the COBRA changes under the 2009 Stimulus Act.