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Employers Answers to the COBRA Premium Subsidy

✖ The American Recovery and Reinvestment Act of 2009 (ARRA), referred to as the Economic Stimulus package, took effect on February 27th, 2009. The Act includes a 65% premium subsidy for up to 9 months of COBRA continuation coverage for qualified beneficiaries who had a COBRA qualifying event that was an involuntary termination of employment, including employees fired for poor job performance, between September 1st, 2008 and December 31st, 2009. These individuals are referred to in the Act as "assistance eligible individuals". Keep in mind that all provisions of the original COBRA act remain unchanged, including the act covering employers with 20

or more employees.

What does this Act mean for you as the employer?

In summary, assistance eligible individuals will pay for only 35% of their insurance benefits under COBRA. The remaining 65% will be paid for by the employer while taking a credit for the same amount on their current payroll tax liability.

Are there limitations on individuals eligible for the subsidy?

There are income limitations to the individual; therefore individuals otherwise qualified in the eyes of the employer may not actually be qualified. The employer can assume that any employee who is involuntarily terminated between the eligible dates is eligible. The individual would have the subsidy recaptured on their personal tax return should their income exceed the maximum thresholds.

What if the employee is involuntary terminated for gross misconduct?

If employment is terminated due to gross misconduct, they are not considered an assistance eligible individual.

When does the 65% subsidy start?

Although it is available to individuals involuntarily terminated between September 1st, 2008 and December 31st, 2009, the subsidy is not retroactive. If an assistance eligible individual did not originally elect COBRA, they should be notified by April 18th, 2009 of their special election period of 60 days after the notice to elect coverage.

What insurance is covered under the Act?

The subsidy is generally available for COBRA continuation coverage under any group health plan, including medical, dental, and vision coverage. It does not apply to a flexible spending account (FSA).

Should an employer just reduce an assistance eligible individual's premium to 35%?

No. An individual may not be eligible for the subsidy as a result of their income or they may be eligible for coverage under another group health plan.

Can an employer just pay 100% of the premium?

No, the Act does not allow the individual's 35% share of the premium to be paid by the employer if the employer has paid 100% of the premium. If an employer elected to pay 50% of a \$500 premium, for example, the employee would only have to pay 35% of their share of \$250, and the employer would only be able to claim a subsidy of 65% of \$250.

Are tax exempt entities subject to this Act?

Yes, even though the entity is tax exempt from federal income tax, this subsidy credit is taken on the federal payroll tax return; 941.

What if the employer does not have a 941, payroll tax liability?

The employer would claim an "overpayment" of payroll taxes on a 941 tax return and receive a refund.

How long does the subsidy continue?

The subsidy continues for up to 9 months or until; the individual becomes eligible under another group health plan or Medicare (not necessarily enrolled, but just eligible), the individual reaches the maximum period of coverage required under COBRA, the individual fails to timely pay their portion of premium, or the employer ceases to provide any group health plan to any employee.

Individuals becoming eligible under another plan or Medicare must notify their former employer in writing, otherwise they may be subject to a penalty of 110% of the subsidy paid on their behalf.

Although the subsidy continues for up to 9 months, the time period is measured separately from COBRA coverage. Therefore, if an individual has more than 9 months of COBRA remaining they would revert back to paying the full premium upon the expiration of the subsidy.

The subsidy is for 9 months after the qualifying event occurring on or before December 31st, 2009. In this case, the subsidy may run until September 30th, 2010.

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