



COBRA Fact Sheet

Summary of COBRA Changes in the American Investment and Recovery Act

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Employee Benefits – Business Insurance

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On Tuesday, February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act 2009 (the Act). Certain provisions in the Act will affect COBRA and Colorado Continuation of Coverage (CCOC) right and responsibilities for employers and employees. We expect federal guidance and regulations to be issued by the Department of Labor, the Department of Health and Human Services and/or the Treasury Department. Following is a brief summary of the new COBRA/CCOC provisions. This is only a summary and should not be considered as legal advice; you are encouraged to seek advice from your own consultants and counsel.

Summary of New COBRA/CCOC Law

1. Employers Affected by the Act – Although COBRA normally only affects employers with 20 of more employees, the Act’s specific changes to COBRA will also apply to employers with fewer than 20 employees who previously were regulated only under CCOC law. The Act does not apply to flexible spending accounts (FSA’s); in other words, there is no subsidy for an ex-employee who elects to continue coverage under his or her FSA.
2. Known Dates – Certain dates and timeframes under the Act have known significance:
 - ◇ September 1, 2008 – the date on or after which a person was involuntarily terminated and who will qualify for the subsidy
 - ◇ February 17, 2009 – the date the ACT was passed
 - ◇ March 1, 2009 – the date the subsidy commences for COBRA/CCOC coverage
 - ◇ March 19, 2009 – the date by which new and revised model COBRA notices must be provided by federal government agencies
 - ◇ April 18, 2009 – the date by which the new and revised COBRA notices must be distributed/used by the employers
 - ◇ Nine months – the maximum length of time for which qualified individuals can take the COBRA premium subsidy
 - ◇ Eighteen months – in general, the maximum length of time for COBRA coverage due to termination of employment, unless COBRA beneficiary qualifies for the disability extension (govern by current COBRA law)
 - ◇ Twenty-nine months – the maximum length of time for COBRA coverage under the disability extension
 - ◇ Thirty-six months – the maximum length of the time for COBRA coverage if another “qualifying event” (death of the employee, divorce) occurs during the initial eighteen months of COBRA coverage (governed by current COBRA law)

Because the date the subsidy commences is before the date that employers must notify ex-employees and their dependents of the subsidy, there will be a period of the time when premiums billed will not reflect the subsidy. Premium bills have to be reconciled and adjusted once the identity of persons electing COBRA/CCOC and the subsidy is known.

3. Federal Government Subsidy – Certain individuals (those who are involuntarily terminated from their employment) who elected or who are eligible to elect COBRA/CCOC from September 1, 2008 and December 31, 2009, are eligible for a federal subsidy of their COBRA/CCOC premiums. The Act calls these persons “Assistance Eligible Individuals.”

- ◇ Eligibility for Subsidy – Individuals who have been involuntarily terminated between September 1, 2008 and December 31, 2009, who either elected or are eligible to elect COBRA/CCOC, along with their dependents are eligible for 65 percent subsidy toward their COBRA/CCOC premium.
- ◇ Repayment of Subsidy – Only persons with incomes above \$125,000 (single) and \$250,000 (couples filing jointly), if they accept the subsidy, will be required to repay the subsidy by an addition to their income tax liability in the amount of the subsidy. However, they can waive the subsidy to avoid inclusion of the subsidy amount as an income tax liability.

Employers and insurers are not required to track income limits of the COBRA/CCOC beneficiary, but both employers and insurers as applicable must pay the subsidy even to high income COBRA/CCOC beneficiaries unless those individuals affirmatively waive the subsidy.

- ◇ Subsidy Effective Date and Duration – Individuals eligible for the subsidy will pay the reduced premium of 35 percent for COBRA/CCOC coverage periods beginning March 1, 2009. The subsidy is not available for COBRA/CCOC in effect before the date. The subsidy will expire the earlier of:
 - a) when the individual becomes eligible (actual coverage is not required) for another group health plan or Medicare, or
 - b) the earliest of two dates:
 - ◇ Nine months after the subsidy period begins to apply to that individual, or
 - ◇ The end of the original maximum period of COBRA/CCOC if the person either currently has COBRA/CCOC or had the person elected COBRA/CCOC; i.e., the regular COBRA coverage period commences from the date coverage was lost due to the qualifying event of involuntary termination.
 - c) If an individual becomes eligible for other coverage and fails to report the coverage, that individual is subject to repayment penalty to 110 percent of the subsidy amount.
- ◇ Amount of Subsidy – Plan sponsors can only change these eligible qualified individuals 35 percent of the applicable COBRA/CCOC rate for the nine month period. Employers or insurers will pay 65 percent difference, and then are permitted to reduce their payroll taxes dollars for dollar to offset the 65 percent.

4. Payroll Tax Credit – The payroll tax credit can be taken even if the person on whose behalf the subsidy is paid was not an employee of the subsidy payer (i.e., the dependents of the ex-employees were not even on the employer’s payroll).

a) Who pays the subsidy –

- ◇ Employers subject to COBRA – the employer is responsible for paying the 65 percent subsidy and recovering the tax credit.
- ◇ Multi-employer plans – the plan is responsible for paying the subsidy and recovering the tax credit.

b) Credit is earned on the date the individual’s 35 percent payment is received, not the date of the employer’s or insurer’s 65 percent payment. This means that payroll tax reductions in the amount of the credit should not be taken before the confirmation that the COBRA/CCOC beneficiary has paid his or her 35 percent. If the COBRA/CCOC beneficiary does not timely pay his or her 35 percent, then the 65 percent subsidy payment will be refunded/credited back to the payor.

c) The person claiming the credit must maintain supporting documentation, such as an attestation of involuntary termination. For more information, visit the IRS FAQs at this link: <http://www.irs.gov/newsroom/article/0,,id=204708,00.html>.

5. Special Election period – The Act also creates a new special election period for those involuntarily terminated employees and their dependents who initially declined COBRA, or who dropped COBRA coverage, and who became or become eligible for COBRA between September 1, 2008 and December 31, 2009.

As of this date of this COBRA fact sheet, the State of Colorado has not provided for a similar special election period for CCOC. Thus, those persons who were offered CCOC on or after September 1, 2008 but who did not elect CCOC before February 17, 2009 are not now legally entitled to enroll in CCOC to obtain the subsidy for CCOC commencing March 1, 2009.

- ◇ 60 Day Election Period for COBRA – Eligible individuals as described above will have until 60 days after they receive the notice of this new special election period to elect COBRA and receive the subsidy.
- ◇ 60 Day Election Period for CCOC – Eligible CCOC individuals will have until 60 days after they receive their notice of this new special election period to elect CCOC and receive the subsidy.
- ◇ COBRA/CCOC coverage elected during the special election period cannot take effect prior to March 1, 2009, and will end 18 months from the date of initial eligibility for COBRA/CCOC, not from the special election date.
- ◇ Retroactivity – The subsidy is not available for period of COBRA/CCOC coverage before March 1, 2009.

6. Notices – The U.S. Department of Labor and other agencies issued new model notices approximately March 19, 2009.

- ◇ Who Must Send Notice

1. Employers subject to COBRA – Employers or COBRA administrators must provide new COBRA notices by April 18. The new notice must be sent regardless of whether COBRA was elected.
 2. Employers subject to CCOC – Health insurance insurers must provide new CCOC notices by April 18. The new notice must be sent to all individuals who may be eligible for the premium subsidy, including individuals who were involuntarily terminated between September 1, 2008 and December 31, 2009, and who either elected and are currently covered by CCOC, or who are eligible to elect CCOC on or after February 17, 2009.
- ◇ Contents of New Special Enrollment Notice – the notice must inform individuals of:
1. The availability of the premium subsidy.
 2. The option to enroll in less expensive coverage than what the individual had the day before the involuntary termination, but only if permitted by the employer plan sponsor and only if there are other enrollment options (i.e., at least dual coverage of health care; other dental and vision stand alone plans do not count as “dual option”). Individuals will have 90 days from the date of the notice to elect to enroll in the different coverage.
 3. For individuals who were involuntarily terminated but who did not elect COBRA, the notice must also inform them of their new opportunity to elect COBRA.
 4. Other details notice requirements which are included in the model notice.
 - ◇ Contents of Revised Initial Notice of COBRA Rights – The Department of Labor issued a model notice for employers to distribute to enrollees under the employer plan. This new notice will contain a description of the premium subsidy. Employers must start using this new Initial Notice of COBRA rights by April 18.
7. Outreach – In addition to issuing model notices and instructions, the U.S. Department of Labor and other agencies will be providing public education and providing outreach to employers, administrators, and other entities. Below are links to FAQs and new information just recently issued by federal agencies that provide assistance for employers.
- ◇ Internal Revenue Service – Information for Employers on the COBRA Health Insurance Continuation Premium Subsidy – <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>
 - ◇ U.S. Department of Labor – COBRA Continuation Coverage Assistance Under The American Recovery And Reinvestment Act Of 2009 – <http://www.dol.gov/ebsa/cobra.html>