

New Federal and State COBRA Compliance Requirements for 2009

Due to recent legislation, employers are subject to significant obligations and financial penalties for non-compliance regarding COBRA and state COBRA-like plans (such as Cal-COBRA).

As a reminder, federal COBRA applies to employers with 20 or more employees while Cal-COBRA applies to companies with 2-19 employees. Hawaii currently has no state COBRA-like plan.

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA), formerly referred to as the Stimulus Bill, into law. One aspect of ARRA **provides eligible, involuntarily-terminated individuals and their beneficiaries (“assistance eligible individuals”) with the following benefits with regards to the continuation of their group health benefits:**

1. **A Premium Subsidy of 65% for up to 9 months** - This applies to both federal COBRA and state COBRA-like plans.
2. **Alternative Coverage** - The ability for an employer to offer alternative coverage from what was in place at the time of the loss of coverage; and
3. **A New Election Period** - The ability to elect federal COBRA through an extended or special-election period. States who have a COBRA-like plan may enact legislation to provide a new election period. **California enacted such legislation which became effective on May 12, 2009.**

Eligibility

An “**assistance eligible individual**” (AEI) is a former employee or qualified beneficiary (spouse or dependent) who meets all of the following criteria:

- The employee was or will be involuntarily terminated between September 1, **2008** and December 31, **2009**;
- Is eligible for COBRA continuation coverage or state COBRA-like coverage from September 1, **2008** to December 31, **2009**; and
- Elects COBRA coverage or state COBRA-like coverage.

How the Subsidy will Work

An “assistance eligible individual” who elects COBRA or state COBRA-like coverage will only need to pay 35% of his/her full COBRA premium (individual AND dependent cost) in order to be deemed to have paid the full amount under ARRA. **For federal COBRA -- the premium reduction (65% of the full premium) is generally fronted by the former employer. For Cal-COBRA – the premium reduction will generally be fronted by the insurance company.** These entities will be reimbursed the 65% in the form of a payroll tax credit or direct reimbursement from the federal government.

Immediate Action Items for Employers

- Determine whether to provide an alternative coverage option.
- Determine who may be eligible for the subsidy and special-election period. **For small California employers, provide your insurance carrier with a list of these individuals.**
- Draft and/or revise all current COBRA and state COBRA-like coverage notices and forms to include information on the new premium subsidy, and (if applicable) special-election period. **For small California employers, review the new notices being sent out by your insurance carrier.**
- **By April 18, 2009, the following is required by law:**
 - Notify all qualified beneficiaries with a qualifying event date on or after September 1, 2008, of the availability of the new premium subsidy;
 - Notify all qualified beneficiaries with a qualifying event date on or after September 1, 2008, who did not have COBRA continuation coverage in effect on February 17, 2009 (because they did not elect COBRA or because they dropped COBRA coverage prior to February 17, 2009) of special-election period.
- **For California small employers - By May 26, 2009 or seven business days after you have provided notice of the qualifying event to your insurance carrier, ensure that your health plan or administrator notifies all qualified beneficiaries with a qualifying event date on or after September 1, 2008, who did not have Cal-COBRA continuation coverage in effect on May 12, 2009 (because they did not elect Cal-COBRA or because they dropped Cal-COBRA coverage prior to May 12, 2009) of special-election period pursuant to law.**
- **For California small employers, make sure that your health plan or administrator updates all Qualifying Event notices for Cal-COBRA to include language required by the new legislation.**

While we hope that this information helps you comply with these new regulations, please know that this email is not and should not be considered a comprehensive overview of this legislation. As always, we remain committed to providing you, our client, with advice and guidance on these and other HR matters. We encourage you to call for further information and assistance in administering these changes for your company.

If you need COBRA administration kits, please contact us. Vantaggio has created a series of letters for Federal COBRA compliance that are more user-friendly than the Department of Labor (DOL) model notices that were recently published, contain helpful instructions for employers, and are drafted in language that will be more easily understood by the recipients.

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