

## ALERT: Premium Assistance for COBRA Benefits EFFECTIVE MARCH 1, 2009

On February 17, 2009 the American Recovery and Reinvestment Tax Act of 2009 (the "Act") was signed into law. Any employer with 20 or more employees may be affected by this new law's modifications to the Consolidated Omnibus Business Reconciliation Act of 1985 ("COBRA").

The following are just a few of the details of the new law:

- Effective March 1, 2009, affected employers will be responsible for paying 65% of COBRA premiums for the first 9 months that a former employee receives coverage. This payment obligation applies regardless of the percentage of the premium paid by the employer during the employee's employment. The employer must first pay 65% on behalf of the employee and then the employee is responsible for the remaining 35%. The employer is eligible for reimbursement from the Treasury Department.
- In order to be eligible an employee must have been involuntarily terminated between September 1, 2008 and December 31, 2009 and must be eligible for COBRA.
- Individuals involuntarily terminated on or after September 1, 2008 who declined COBRA at the time, will have a special election period of at least 60 days to elect continuation coverage. The coverage will be effective as of March 1, 2009 and shall not extend beyond the period of COBRA continued coverage that would have been required if COBRA had been elected when initially offered.
- The subsidy is not retroactive and will only apply to COBRA premiums paid after the effective date of February 17, 2009.
- An employer may choose to offer coverage different from what they were originally offered at the time of the COBRA-qualifying event. If the individual chooses to do so, the coverage will be treated as continuation coverage.

What you need to do:

- Update COBRA election notices and other communications to reflect the subsidy.
- You must notify any individuals involuntarily terminated on or after September 1, 2008 of the subsidy and give them an opportunity to elect COBRA, if they had not previously done so.
- Within 60 days of February 17, 2009 you must provide any individuals involuntarily terminated on or after September 1, 2008 with: (a) forms for establishing eligibility for the subsidy; (b) the option to enroll in different coverage (if you so choose); (c) information regarding the employee's obligation to notify the plan administrator upon becoming eligible for another health plan or Medicare. Any individual who does not make this notification will be subject to a penalty.

The Department of Labor intends to prepare model notification forms by March 17, 2009. However, you should start to make the appropriate adjustments to your policies and identify those individuals which may be eligible for the subsidy.

If you have any questions about this alert, would like additional information or need assistance implementing the above requirements, please do not hesitate to contact us.