

Scott Warrick, JD, MLHR, SPHR

Human Resource Consulting, Employment Law & Training Services

(614) 367-0842: Office (614) 738-8317: Cell

www.scottwarrick.com

COBRA Continuation Coverage Assistance Under The American Recovery And Reinvestment Act Of 2009

The American Recovery and Reinvestment Act of 2009 (ARRA), which President Obama signed into law on February 17, 2009, provides for a 65% reduction in COBRA premiums for eligible individuals for up to 9 months. Under the new law, the employer will pay 65% of the eligible individual's premiums while the individual opting for COBRA coverage will cover the difference between the subsidy and the full premium (35%).

The amounts the former employer pays to subsidize the covered individual's COBRA premiums (65% of the total premium) will be "offset" by a tax credit against the employer's wage withholdings and FICA payroll taxes. However, if the amount the employer makes in subsidy payments exceed its wage withholdings and FICA taxes, then the U.S. Treasury Department will directly reimburse the employer for any premium payments made over this amount. However, the employer may not receive its reimbursement or payroll tax credit until the covered individual pays his/her unsubsidized portion of the premium.

The eligible person can continue to be enrolled in the same employer-provided plan he/she is accustomed to and can continue to use the same physicians and benefits. Although health providers and employers are not required to offer other health plans to its qualified beneficiaries, they may certainly do so. If other plans are offered to the beneficiaries, then they must be given up to 90 days to elect this alternative coverage.

The government's subsidy will not be administered retroactively. It will only subsidize premium payments made after February 17, 2009. If a qualified beneficiary opted for COBRA and began making premium payments before February 17, 2009, the covered person won't get a credit or refund for the COBRA premiums paid before this effective date.

Similarly, if someone who qualifies for the subsidy makes their full COBRA payment between February 17, 2009 and April 30, 2009, they are entitled to either receive a credit for this excess payment towards future payments or a full reimbursement of this excess amount. If a reimbursement is to be issued, it must be made within 60 days of receiving the full premium.

Anyone who is eligible for other group health coverage or another government program, such as through a spouse's plan, Medicare, or through the Health Coverage Tax Credit Program under the Trade Assistance Adjustment Act, are also not eligible for this premium subsidy program. If a qualified beneficiary fails to notify his/her group plan that he/she has become eligible for such other coverage, that individual may be subject to a 110% penalty of the amount of the subsidy paid on his/her behalf.

It is important to understand that people who qualify for this subsidy can receive this government subsidy for up to 9 months. Since the new law applies to covered individuals whose primary beneficiary is involuntarily terminated from his/her job between September 1, 2008 and December 31, 2009, then subsidies may be paid out as late as September 30, 2010 to some individuals.

A COBRA "qualified beneficiary" who qualifies for this government subsidy must meet all of the following requirements, which means:

1. The primary beneficiary must be eligible for COBRA continuation coverage due to an involuntary job loss, other than for "gross misconduct," sometime between September 1, 2008 and December 31, 2009,
2. The individual must have either elected for COBRA coverage within the original window of eligibility or the person must now elect for COBRA coverage within 60 days of receiving notice of the government's new subsidy program, as long as the former employer continues to exist and continues to offer group coverage when it was first offered or during this new election period,
3. At the time of the involuntary job loss, the employee was participating in the employer's group coverage and
4. The person must have an adjusted gross income of less than \$145,000 for people filing as individuals and an adjusted gross income of less than \$290,000 for people filing jointly. The subsidy is phased out for people earning \$125,000 and more filing individually and \$250,000 and more for people filing jointly.

While it is an employer's responsibility to determine an individual's eligibility for this COBRA Subsidy Program, employers are also responsible for sending out "COBRA Subsidy Program" notices to *anyone* who terminated their employment with the organization between September 1, 2008 and December 31, 2009 ... regardless of whether the employer believes the person is eligible for the subsidy program or not. This notice must go out to all such individuals by **APRIL 17, 2009**. Qualified individuals will have up to 60 days to elect COBRA coverage. However, again, if the employer or plan provider offers alternative coverage, the individual is allowed up to 90 days to make this election.

If a qualified beneficiary was previously eligible for COBRA coverage due to an involuntary termination and originally declined COBRA coverage, that person will now have another chance to enroll under this subsidized program.

The Department of Labor is expected to release a “model notice” by March 19, 2009.

While companies with fewer than 20 employees are not covered by COBRA, employers should check with their benefits administrator since some states, such as Ohio, require employers with fewer than 20 employees to offer continuation coverage. If an employer offers health benefits in one of these states, the covered individual may be eligible for this subsidy if that state's continuation of coverage requirements are comparable to COBRA's continuation of coverage requirements. Employer's should check with their plan's benefits administrator to confirm whether this subsidy applies to their state's laws as well.

Further guidance from the Department of Labor is expected by March 19, 2009.

Notice: Legal Advice Disclaimer

The purpose of these materials is not to act as legal advice but is intended to provide human resource professionals and their managers with a general overview of some of the more important employment and labor laws affecting their departments. The facts of each instance vary to the point that such a brief overview could not possibly be used in place of the advice of legal counsel.

Also, every situation tends to be factually different depending on the circumstances involved, which requires a specific application of the law.

Additionally, employment and labor laws are in a constant state of change by way of either court decisions or the legislature.

Therefore, whenever such issues arise, the advice of an attorney should be sought.



Scott Warrick, JD, MLHR, SPHR

Human Resource Consulting and Employment Law Services
(614) 367-0842 Office ♣ (614) 738-8317 Cell ♣ (614) 367-1044 FAX

www.scottwarrick.com

CEO Magazine's 2008 Human Resources "Superstar"

Nationally Certified Emotional Intelligence Instructor

2008, 2007, 2006 and 2003 SHRM National Diversity Conference Presenter

- ❖ **PREVENTING Employee Problems from happening and**
- ❖ **Training Managers and Employees ON-SITE in over 40 topics**

Scott travels the country presenting his revolutionary "**Tolerance & Diversity for White Guys ... And Other Human Beings,**" which focuses on the **BASIC SKILLS** needed to combat workplace bullying and harassment. Scott's program teaches the importance of becoming an Emotionally Intelligent Communicator, which leads to a more tolerant workforce between managers and employees, men and women, odd people and "more odd" people and so on.

Scott's clients include the Ohio Department of Administrative Services, The Ohio State University, Area Agency on Aging, Skyline Chili, The Ohio Supreme Court, Heinz Frozen Foods, Boeing, Honeywell, International Truck & Engine, MTD Products (Cub Cadet, Troy-Bilt & Bolens Lawn Products), Honda of North America, Utah State Workforce Development, etc.

Scott's academic background and awards include:

- Masters degree in Labor and Human Resources: The Ohio State University
- Capital University College of Law (Class Valedictorian (1st out of 233))
- The Human Resource Association of Central Ohio's Linda Kerns Award for Outstanding Creativity in the Field of Human Resource Management and the Ohio State Human Resource Council's David Prize for Creativity in Human Resource Management

Solving Employee Problems BEFORE They Happen!