

Health Law Bulletin

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CERTAIN DEPARTING EMPLOYEES ELIGIBLE TO RECEIVE SUBSIDY FOR CONTINUED COBRA HEALTH INSURANCE

Insurance continuation coverage under COBRA (Consolidated Omnibus Budget Reconciliation Act of 1986) was changed by the recently passed American Recovery and Reinvestment Act of 2009. The COBRA law permits certain former employees and their dependents to temporarily continue their health insurance coverage at group rates for a specified period of time. Employers with 20 or more employees are usually required to offer COBRA coverage. The 2009 changes to the law enacted a 65% subsidy of the cost of the health insurance continuation for certain eligible persons. The subsidy can last up to nine months, ending earlier if the individual goes on Medicare or obtains other qualifying group health coverage, such as through new employment. Even if the subsidy ends, the individual may retain COBRA coverage, at the full rate, for any COBRA time remaining.

To be eligible for the subsidy, an employee must have involuntarily lost his or her job for some reason other than gross misconduct between September 1, 2008, and December 31, 2009. The law contains provisions for employer notification of former employees who lost their jobs prior to February 17, 2009, which was the date that these COBRA amendments were passed. Any employer who has not already notified these former employees should consult with legal counsel immediately because the original notice period has expired.

If highly compensated former employees accept the subsidy, they will be subject to recapture provisions, starting at individuals who make more than \$125,000 annually and couples filing joint returns who make more than \$250,000 annually.

The person receiving the subsidy pays the non-subsidized portion (35%) of the COBRA premium to the former employer, health plan, or insurer, as the case may be. The entity that receives payment is reimbursed the remaining 65% by having the 65% treated as a credit against the entity's payroll taxes.

If you have any questions about continuing COBRA coverage, especially under the new law, you may want to consult your attorney or Human Resources Department for advice.