

2009 COBRA Calendar

Immediately

Identify all COBRA eligible employees from September 1, 2008 - February 16, 2009. Determine who were involuntarily terminated.

March 19, 2009

Model Notices become available from the Department of Labor.

March 19 - April 18, 2009

Notices must go out to COBRA eligible individuals and dependents who have a qualifying event from September 1, 2008 to December 31, 2009.

60 Days from Date Notice Received

Eligible individuals may elect coverage and pay back-premiums due since March 1, 2009 within 45 days of their election.

After Employee Premium is Received

Employer can claim a tax credit on IRS Form 941. Employer also has other reporting requirements.

Through December 31, 2009

The 65% subsidy is available for qualifying COBRA eligible individuals involuntarily terminated; all COBRA notices for employees terminated through this date must include the subsidy language.

All information included in this document was created as a general guideline. For more information on COBRA compliance please contact your COBRA administrator or Business Benefits' advisor.

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act. Under this act there are several important changes to the COBRA law. This Act includes a 65% subsidy, for up to 9 months, of COBRA premiums for involuntarily terminated employees and their covered dependents between September 1, 2008 and to December 31, 2009. Here are some of the details and requirements established by the Act:

- The employer must immediately identify all continuation eligible individuals terminated between September 1, 2008 and February 17, 2009. Employers have 60 days from the enactment date to notify these individuals of these changes. A qualified individual has 60 days from the date of the notice to elect COBRA coverage. The election period must begin March 1, 2009 and cannot be made retroactive for those who did not elect COBRA when originally offered. Any resulting gap in insurance will not be counted as a break in coverage for the purposes of the 63-day rule under HIPAA's portability rules for pre-existing conditions.
- To qualify for the 65% federal subsidy, the terminated employee must pay 35% of the applicable COBRA premium and the employer funds the remaining 65%. The employer then claims a credit on its next deposit of federal income and employment taxes. If the employer's tax obligations are less than the subsidy, then the employer will receive a direct payment from the Treasury for the difference.
- The subsidy is available effective March 1, 2009 to qualified individuals and is available for up to nine months. Eligibility for the subsidy ends when the individual becomes eligible for either another employer's health plan or Medicare. The individual is required to provide timely written notice that he or she no longer qualifies for the COBRA subsidy; failure to do so is punishable by a penalty equal to 110 percent of the subsidy received after becoming eligible for other coverage.
- High-income individuals may choose to waive the subsidy. Individuals with a modified adjusted gross income exceeding \$145,000 (\$290,000 if married and filing a joint return) are not eligible for the subsidy, and if received will have their income tax increased by the entire amount. Individuals with a modified adjusted gross income of between \$125,000 and \$145,000 (or \$250,000 and \$290,000 if married and filing a joint return) who receive a subsidy will have their income tax increased by a proportional percentage.
- Employers will claim a credit for the COBA subsidy amount on Form 941, Employer's Quarterly Federal Tax Return. Supporting documentation must be maintained and should include:
 - Dates and amounts received of all assistance eligible individuals' 35% share of the premium
 - A copy of carrier statement indicating proof of timely payment of the full premium
 - Attestation of involuntary termination, including the date of the involuntary termination (which must be during the period from Sept. 1, 2008, to Dec. 31, 2009), for each covered employee whose involuntary termination is the basis for eligibility for the subsidy
 - Proof of each assistance eligible individual's eligibility for COBRA coverage at any time during the period from Sept. 1, 2008, to Dec. 31, 2009, and election of COBRA coverage
 - A record of the SSN's of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for one individual or two or more individuals

Who is eligible for the COBRA subsidy under the American Recovery and Reinvestment Act of 2009 (AARA) and when does it start?

The AARA provides for a 65% reduction in COBRA premiums for certain “assistance eligible” individuals for up to 9 months. An “assistance eligible” individual is an involuntarily terminated individual who is a qualified beneficiary eligible for COBRA at any time during the period beginning September 1, 2008 and ending December 31, 2009. For those that were involuntarily terminated after September 1, 2008 and chose not to elect COBRA, or dropped coverage early, there is a special election period that would allow COBRA to start March 1st with a 9-month subsidy. However, the COBRA coverage would end after the maximum period allowed from the original termination date or when the individual becomes eligible for other group health insurance or Medicare.

When do COBRA beneficiaries start paying the reduced COBRA premiums?

The 65% subsidy begins for those eligible on March 1, 2009. Employers will need to establish new administrative procedures to implement the subsidy and employers may require eligible employees to pay the full COBRA premium amount for March and April 2009. Then, the employer must reimburse the employee for the 65% overpayment within 60 days of receiving the full premium, or credit the overpayment toward future premium payments.

Is the subsidy available to a terminated employee who was not enrolled in the group coverage?

No, the COBRA subsidy and special election period is only available to those terminated employees and their dependents who participated in their employer's group health, dental and vision insurance plans at the time of the involuntary termination.

How does the employer get reimbursed for the 65% premium not charged to the employee?

Only after the employer receives the employee's portion of the premium, the employer claims a credit on its next deposit of federal income and employment taxes. The COBRA subsidy amount is reimbursed as a credit on the Form 941. The Form 941 has been revised to allow for this credit. If the employer's tax obligations are less than the subsidy, then the employer will receive a direct payment from the Treasury for the difference.

Does the employer have to wait until the end of the quarter to take the credit?

The employer can decide either to offset its payroll tax deposits or claim the subsidy as an overpayment at the end of the quarter.

Do these changes include small businesses with fewer than 20 employees?

The subsidy applies both to coverage under federal COBRA law and to coverage under state continuation coverage laws applicable to employers with fewer than 20 employees. However, the employer's role in the changes to state continuation is not clear at this time. More information is pending from the US Department of Labor and each state's Department of Insurance.

Is there anything an employer needs to do if they have a TPA handle their COBRA benefits?

It is the employer's responsibility to issue updated COBRA notices, provide new enrollment options and implement subsidy procedures. Although most administrators will stay compliant with all applicable laws, the employer must be aware of their required actions under this new law and that their TPA may charge an extra fee for the special election notices. Check with your administrator for all recommended action and additional fees if applicable and remember COBRA is ultimately employer-responsibility.

Is the subsidy treated as taxable income for the beneficiary?

The subsidy is not taxable income except for high-income earners. Individuals whose modified adjusted gross income is between \$125,000 and \$145,000, or \$250,000 and \$290,000 for those filing joint returns, will have to pay back some of the subsidy as taxable income. For those whose modified adjusted gross income exceed \$145,000, and \$290,000 for those filing joint returns, must repay the full amount of the subsidy as additional tax or they can choose to waive the subsidy.

What action does the employer need to take?

1. Identify all continuation eligible individuals from September 1, 2008 through December 31, 2009. Determine who are involuntarily terminated.
2. Update COBRA notices and related materials now that Model Notices are available from the U.S. Department of Labor.
3. Notify individuals within 60 days of February 17, 2009 of their new election period and potential subsidy.
4. Develop procedures for handling the premium paid by the eligible individual and coordinate with payroll systems the method of claiming the remaining 65% as a payroll tax credit.
5. Understand and be prepared for all reporting requirements.
6. Understand how this new Law may impact COBRA claims experience and administrative costs.

For more information click on the following links:

[IRS Form 941 2009 instructions](#)

[IRS Form 941 for 2009](#)

[U.S. Department of Labor 2009 COBRA Fact Sheet](#)

[COBRA Assistance under ARRA](#)

[IRS Questions & Answers for Employers](#)

[General Notice](#) (Full version)

Plans subject to the Federal COBRA provisions must send the General Notice to all qualified beneficiaries, not just covered employees, who experienced a qualifying event at any time from September 1, 2008 through December 31, 2009, regardless of the type of qualifying event. This full version includes information on the premium reduction as well as information required in a COBRA election notice.

[General Notice](#) (Abbreviated version)

The abbreviated version of the General Notice includes the same information as the full version regarding the availability of the premium reduction and other rights under ARRA, but does not include the COBRA coverage election information. It may be sent in lieu of the full version to individuals who experienced a qualifying event during on or after September 1, 2008, have already elected COBRA coverage, and still have it.

[Notice in Connection with Extended Election Periods](#)

Plans subject to the Federal COBRA provisions must send the Notice in Connection with Extended Election Periods to any assistance eligible individual (or any individual who would be an assistance eligible individual if a COBRA continuation election were in effect) who:

1. Had a qualifying event at any time from September 1, 2008 through February 16, 2009; and
2. Either did not elect COBRA continuation coverage, or who elected it but subsequently discontinued COBRA.