



American Recovery and Reinvestment Act of 2009

Wednesday, April 1, 2009

Overview

- American Recovery and Reinvestment Act of 2009 (ARRA 2009)
 - COBRA
 - Assistance Eligible Individuals (AEIs)
 - Involuntary Termination of Employment
 - Independent Election Rights
 - COBRA Premium Assistance
 - Government Subsidy
 - Duration of Subsidy
 - Included Benefits
 - Standard Annual Open Enrollment
 - Second Qualifying Event
 - Employer Paid COBRA
 - Enhanced notice obligations
 - Modified notices and new forms

Overview

- American Recovery and Reinvestment Act of 2009 (ARRA 2009)
 - COBRA
 - Extended Election Period
 - “Second chance” elections
 - Special Optional Benefit Enrollment
 - High-Income Individuals
 - Payroll Regulations
 - Department of Labor (DOL) Review Expanded Administration
 - Trade Adjustment Act (TAA)
 - Penalties
 - Be Prepared

ARRA 2009

- Signed by President Obama February 17, 2009
- Title III – Premium Assistance for COBRA Benefits
 - Amends and extends existing COBRA rules
 - Creates Internal Revenue Code payroll tax rules
 - Does not change underlying COBRA regulations
 - Applies to all employers subject to federal & state COBRA requirements
 - 40 states currently have COBRA expansion laws

Effective Date

- Date of Enactment (DOE) 2/17/2009
 - Technically effective first period of coverage after ARRA signed
 - Practically enforced beginning March 1, 2009
 - Two month grace period to adjust COBRA premium (by May 2009)
 - Employers unable to modify March or April COBRA invoices to reflect subsidy may charge full premium
 - Must credit subsequent coverage periods or reimburse AEI
 - » Reimbursement required within 60 days of full payment of premium if it is unreasonable to believe credit will be used within 180 days



Assistance Eligible Individuals

- All employees (and eligible dependents) involuntarily terminated between September 1, 2008 and December 31, 2009 including:
 - Current COBRA participants
 - QBs in election period
 - Past QBs
 - Those who elected and are still enrolled
 - Those who elected and terminated
 - Those who did not elect
 - Future QBs
 - Domestic partners are not eligible

Involuntary Termination of Employment

- Involuntary termination of employment
 - Must occur between September 1, 2008 and December 31, 2009
 - Does not apply to any other COBRA initial qualifying events
 - Reduction of hours
 - Death of employee
 - FMLA
 - No longer eligible dependent
 - Divorce
 - Temporary layoff (furlough)
 - Gross misconduct
 - Separation of employment is required

Independent Election Rights

- QBs maintain independent election rights
 - Each QB can independently elect COBRA
 - Each QB can independently receive subsidy

COBRA Premium Assistance

- 65% COBRA premium subsidy calculation
 - Based on 102% of total premium
 - Example:
 - Monthly premium = \$1,000
 - 2% administration fee = \$20
 - Total COBRA premium = \$1,020
 - QB pays \$357
 - » 35% of 102% of monthly premium
 - ARRA subsidy \$663
 - » 65% of 102% of monthly premium

COBRA Premium Assistance

- 65% COBRA premium subsidy
 - May end before COBRA coverage period ends
 - AEI becomes **ELIGIBLE** for other group health coverage (including coverage through a spouse's employer)
 - Coverage does not terminate if other coverage is:
 - » Limited to dental, vision, counseling, or referral services
 - » Flexible spending account (FSA)
 - » On-site medical clinic
 - AEI becomes **ELIGIBLE** for Medicare
 - COBRA ends (maximum coverage period)
 - Failure to pay premiums

COBRA Premium Assistance

- Applies to **ALL** plans
 - Insured and self-funded
 - State and municipal plans
 - Non-COBRA plans subject to state continuation laws
- Applies to **ALL** lines of coverage
 - Medical, dental, vision, HRAs, EAPs
 - Excludes: FSAs & HSAs, on-site medical clinic
- Only applies to coverage AEI was enrolled for at the time of the qualifying event



Standard Annual Open Enrollment Period



- AEI changes plan election
 - Eligible for subsidy
- AEI adds dependents not previously enrolled
 - Dependents NOT eligible for subsidy
- AEI elects new benefits (i.e. – not previously covered for dental and elects dental during open enrollment)
 - Eligible for subsidy

Second Qualifying Event

- Divorce
 - Dependents eligible for subsidy
- Limiting age on contract
 - Dependents eligible for subsidy
- Birth or adoption
 - Dependents eligible for subsidy
- Marriage
 - Dependents eligible for subsidy
- DOL STUMPED!
 - Even though a previously eligible dependent added during open enrollment does not qualify for subsidy assistance, a dependent added due to marriage, birth and/or adoption as a second qualifying event entitles those new dependents to any remaining subsidy available to the original AEI

Employer Paid COBRA

- No recognition of employer paid COBRA
 - ARRA subsidy is aimed at AEIs, not shifting employer subsidy to federal government
 - If employer subsidizes 50% of \$1,000 COBRA premium, 65% assistance payment applies only to AEI's \$500 COBRA invoice
 - \$500 x 65% = \$325 ARRA assistance payment
 - \$175 remaining COBRA premium charged to AEI

Enhanced Notice Obligations

- Four Model Notices
 - General Notice (Full Version)
 - General Notice (Abbreviated Version)
 - Alternative Notice
 - Notice in Connection with Extended Election Periods

Enhanced Notice Obligations

- General Notice (Full Version)
 - Plans must send to all QBs
 - 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 the QE
- AND
- Who have not yet been provided an election notice
- OR
- Who were provided an election notice on or after February 17, 2009 that did not include the additional information required by ARRA
- Notices must be released by April 18, 2009 for those with qualifying events prior to enactment

Enhanced Notice Obligations

- General Notice (Abbreviated Version)
 - Plans must send to all QBs
 - Not just covered employees
 - Who experienced a qualifying event at any time on or after September 1, 2008 through December 31, 2009
 - Regardless of the type of the QE
 - Who have already elected COBRA coverage
- AND**
- Still have COBRA coverage
- Notices must be released by April 18, 2009 for those with qualifying events prior to enactment
- Abbreviated version of the general notice does not include the COBRA coverage election information

Enhanced Notice Obligations

- Notice in Connection with Extended Election Periods
 - Plans must send to all QBs
 - Not just covered employees
 - Who experienced a qualifying event at any time from September 1, 2008 through February 16, 2009
 - Regardless of the type of the QE
 - Who either
 - Did not elect COBRA
 - OR
 - Elected COBRA but discontinued coverage
- Notices must be released by April 18, 2009 for those with qualifying events prior to enactment
- The Notice in Connection with Extended Election Periods includes information on ARRA's additional election opportunity and premium reduction information

Enhanced Notice Obligations

- Insurers must send the Alternative Notice to QBs who became eligible for continuation coverage under state law

Enhanced Notice Obligations

- All current and potential AEl's
 - Involuntary termination
 - On or after 9/1/08 who are eligible for COBRA
 - Who have elected COBRA
 - No COBRA election is in effect
 - QB's who's coverage terminated early
 - QB's who are still in the 60 day election period

Extended Election Periods

- Second Chance Elections
 - Employer must send every AEI from September 1, 2008 to the present a typical COBRA package and new notice
 - Applies even if COBRA
 - Initially rejected
 - Elected but failed to pay
 - Dropped COBRA coverage

Extended Election Periods

- Second Chance Elections
 - Election period from February 17, 2009 until 60 days after notice date
 - Coverage prospective starting 3/1/2009
 - Coverage period not extended
 - Continue to measure coverage period from original qualifying event
 - No extension of maximum coverage period
 - Pre-existing condition limitations may not apply to second chance election

Extended Election Periods

- Example Second Chance Elections
 - Employee involuntarily terminated February 1, 2009
 - In COBRA election period, but not yet elected
 - Employer sends the general notice (full version)
 - Employer & QB must certify that QB is AEI
 - QB that is AEI has two options:
 - Elect regular COBRA coverage, pay premiums back to QE date
 - Elect to commence COBRA coverage on 3/1/2009

Extended Election Periods

- Example Second Chance Elections
 - Employee involuntarily terminated October 1, 2008
 - Could have elected, or did, but not on COBRA now
 - Employer sends subsidy notice
 - Employer & QB must certify that QB is AEI
 - AEIs' coverage begins March 1, 2009
 - Elects to commence COBRA coverage on 3/1/2009

Extended Election Periods

- Example Second Chance Elections
 - Employee involuntarily terminated October 1, 2008
 - On COBRA now
 - Employer sends ARRA notice
 - AEl's' subsidy coverage begins March 1, 2009
 - Elects to continue COBRA coverage on 3/1/2009



Special Optional Benefit Enrollment



- Allows (does not require) employer to offer lower cost plan options
 - Premium cannot exceed the current premium
 - Coverage must be offered to active employees
 - Different coverage may not be only dental, vision, counseling, referral services, health FSA
 - Does not apply to comparable state continuation plans (mini COBRA)
- Confirm availability with COBRA administrator



Special Optional Benefit Enrollment



- Opt-down elections
 - Coverage runs for entire period of COBRA coverage, regardless of when subsidy ends
 - Plan administrator has 60 days to give notice
 - AEI has 90 days after the notice to elect

High-Income Individuals

- Phase-out requirements for high-income individuals (HIIIs)
 - Employer not required to track income thresholds
 - Subsidy creates federal income tax for incomes exceeding \$125,000/\$250,000
 - Proportional phase-out for income between \$125,000/\$250,000 and \$145,000/\$290,000
 - Total phase-out if income exceeds \$145,000/\$290,000
 - HIIIs may waive subsidy
 - Lose AEI rights with permanent election to waive
 - HIIIs may NOT waive subsidy in 2009 and collect in 2010
 - Cannot claim deduction, exclusion or tax-credit
 - In absence of waiver, plan continues subsidy
 - Without waiver HIIIs repay subsidy in part or whole with tax return

Subsidy Termination

- Subsidy ends the earliest date following
 - Nine months of subsidy
 - Expiration of maximum COBRA period of coverage
 - Non-payment of premium
 - QB is **eligible for** other employer group health coverage or Medicare
 - Eligibility for, not coverage
 - Coverage consisting only of dental, vision, counseling, health FSA and/or limited on-site medical facilities do not cease subsidy eligibility

Payroll Regulations

- Payroll tax approach for reimbursement of 65% employer premium responsibility
 - Employer reduces payroll tax deposits to reimburse subsidy
 - Refund check for overpayment due to subsidy
 - Refund check if no payroll tax requirements
 - Applies to multiemployer plans

Payroll Regulations

- New payroll reporting requirements
 - Modified Form 941
 - Add COBRA subsidy payments on line 12a
 - Considered paid on first day of the quarter, hence no failure to deposit penalty
 - Add number of COBRA subsidy eligible participants on line 12b
 - Select a refund or have credit applied to next return on line 15
 - Employer may choose to offset its payroll tax deposit or claim the subsidy as an overpayment at the end of the quarter

Payroll Regulations

- Employers claiming the credit must maintain supporting documentation for the credit claimed including:
 - Information on the receipt, including dates and amounts of the assistance eligible individuals' 35% share of the premium (assistance will run through September 2010 for some AElS).
 - In the case of an insured plan, copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier required under COBRA.
 - In the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the assistance eligible individuals.

Payroll Regulations

- Employers claiming the credit must maintain supporting documentation for the credit claimed including:
 - 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 subsidy eligibility.
 - 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.
 - Retain all records for seven years.

Denial of Subsidy

- DOL review
 - Available with written request if denied
 - Will provide for expedited review of the denial
 - Individual must make application to the DOL
 - Form of application to be provided by the DOL
 - Can be completed online, submitted via mail or fax
 - DOL has 15 business days after receipt of application to make a determination of individuals' eligibility

Expanded Administration

- Requires interaction between employer, COBRA administrator and payroll process
 - Employer
 - Identifies involuntary terminations
 - COBRA administrator
 - Resolicits & expands COBRA enrollment material
 - Checks eligibility
 - Reduces premiums
 - Informs payroll of subsidy
 - Payroll
 - Reduces subsidy from deposits & reports



Expanded Administration



- Revise or distribute Summary of Material Modification (SMM) with new information in election notice
 - Wait to modify original Summary Plan Description (SPD), but attach SMM with updated language

Trade Adjustment Act (TAA)

- ARRA extends COBRA
 - TAA eligible
 - Someone whose job has been eliminated by virtue of some documented aspect of foreign competition
 - Nonforfeitable right to a benefit from Pension Benefit Guaranty Corporation
 - Rules do not apply after December 31, 2010
 - Extension until the earlier of the date the person ceases to be TAA eligible or the end of 2010

Penalties

- Non-compliance
 - IRS and DOL enforcement actions – possible other relief for COBRA notice failure
 - COBRA penalties
 - ERISA
 - \$110 per day for failure to provide notices
 - IRS Code
 - \$100 per day excise tax for failure to comply with COBRA
- Payroll tax penalties apply to employer for subsidy amounts not eligible



Penalties



- AEs must notify plan of eligibility for other group health coverage or Medicare
 - Penalties to AEs
 - 110% of subsidy amount

HIPAA Special Enrollment Changes

- Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA)
 - Effective 4/1/2009
 - 60-day notice period
 - Coverage terminates due to loss of eligibility
 - CHIP premium assistance available

Be Prepared

- ASAP
 - Identify all individuals who became eligible for COBRA for any reason from September 1, 2008 to present
 - Identify those with current COBRA coverage
 - Identify those entitled to a 'second chance' election
 - Establish a process to identify newly eligible AEs after the initial phase-in eligible for subsidy



Be Prepared



- ASAP
 - Confirm new process to administer COBRA subsidy with third party vendor
 - Confirm new process to administer COBRA subsidy with payroll vendor
 - Determine ongoing treatment of voluntary employer subsidy of COBRA premiums (if applicable)
 - Review severance program



Thank You!



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