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## Firms need to quickly comply with new health-care coverage subsidy

**W**hen President Barack Obama signed the economic stimulus package into law on Feb. 17, it became clear that businesses would need to act quickly to comply with a variety of new federal labor-law requirements.



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VIEWPOINT

One compliance issue businesses should address includes new government subsidies for health-care coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

These provisions are the biggest expansion by far in the history of COBRA health-care and benefits law, and nearly all employers that sponsor health-benefit plans for their workers face new administrative challenges and must act quickly to comply with the new law.

### The COBRA subsidy

Under COBRA, laid-off workers can extend employer-sponsored health insurance for up to 18 months if they pay the full premium.

With the new stimulus package, the government agreed to subsidize premiums for workers involuntarily terminated from their job between Sept. 1, 2008, and Dec. 31, 2009. The subsidy is limited and only lasts nine months.

Now if an employee elects COBRA coverage, he is only required to pay 35 percent of the premium and the employer must cover the remaining 65 percent of the premium amount. However, the employer is entitled to a refundable credit toward payroll taxes.

The subsidies took effect March 1, 2009, and individuals will not receive reimbursement for any COBRA payments they made between Sept. 1, 2008 and that date.

There is an income threshold on the

new subsidy, and individuals that have an income above a certain level will be responsible for including the subsidy amount on their income tax returns.

Employers will not have to consider this income limitation when making COBRA subsidy payments or taking payroll tax credits.

### Election period

There is a special COBRA election period for eligible workers laid-off between Sept. 1, 2008, and Feb. 17, 2009. Those who did not elect COBRA coverage during that time span now have a second chance to elect coverage.

The law requires employers to locate former employees who previously declined COBRA coverage and provide notice by April 17, 2009, of their right to the COBRA subsidy coverage.

Former employees have a 60-day window from the date of receiving notification in which to elect coverage. The special election period does not extend the nine-month premium subsidy for these individuals and coverage will become effective March 1, 2009.

Individuals who did elect COBRA on after Sept. 1, 2008, but prior to Feb. 17, 2009, are eligible to receive the subsidy on a prospective basis, beginning March 1, 2009. For workers laid-off on or after Feb. 17, 2009, the general COBRA timing of notice requirements apply.

### Lower-cost health-plan options

Generally under COBRA, individuals can only elect to continue the coverage that they had immediately before losing coverage.

Under the new law, an employer may permit an individual eligible for the COBRA subsidy to elect a lower-cost health plan option available under the employer's plan. However, there are specific health-care coverage requirements in order for this option to apply.

Furthermore, the COBRA premium subsidy is no longer available once an individual becomes eligible for coverage under another group health plan, or Medicare, or otherwise is no longer

eligible for COBRA continuation coverage.

### Notice requirements

The law requires that two new COBRA notices be sent regarding the COBRA subsidy.

One notice must be provided to all laid-off workers currently on COBRA continuation coverage as of March 1, 2009.

The other notice must be provided to all laid-off workers who either declined COBRA when it was initially offered or who elected but subsequently terminated COBRA coverage before March 1, 2009.

The failure to provide such notice could result in penalties of up to \$100 per day and adverse tax consequences.

The notice must include information on the availability of premium assistance, a description of the extended election period, the option to enroll in other health-care coverage if permitted, information on forms necessary to establish eligibility for the subsidy, notice requirement to the health plan when the individual is eligible for other coverage, and the contact information for the plan administrator.

### Applying for reimbursement

The law requires that the entity collecting the 35 percent premium should not collect the remaining 65 percent, but should instead obtain reimbursement from the federal government.

The subsidy amount is reimbursed by being claimed as a credit on the updated Form 941, Employer's Quarterly Federal Tax Return.

Those entitled to the subsidy reimbursement may have to submit reports to the IRS verifying their claims for reimbursement. The Treasury Department will soon release the type of reports required and the applicable deadlines.

Those claiming subsidy credit must maintain supporting documentation for the credit claimed, including:

- Social Security numbers of employees receiving subsidy, amount of

subsidy reimbursed for each qualified beneficiary, and whether coverage was for an employee or an employee and their family.

- Documentation of receipt of the employee's 35 percent share of the premium.

- An invoice copy or other supporting statement from the insurance carrier in the case of insured plans, and proof of timely payment of the full premium to the insurance carrier.

- Declaration of the former employee's involuntary termination during the period from Sept. 1, 2008, to Dec. 31, 2009, and election of COBRA coverage.

Most businesses will need to quickly implement these new changes to ensure compliance with the laws.

Administratively, employers (or insurers) that sponsor health plans should identify laid-off workers since Sept. 1, 2008, and notify them of the new COBRA subsidy coverage.

Furthermore, the faster a business adapts its payroll system and implements new procedures, the easier it will be to track notification deadlines and workers' window periods to elect coverage.

Doing this will ease the burden of maintaining documentation and ensure

accuracy when applying for reimbursement.

While there are still a number of open issues regarding the COBRA subsidy provisions that the federal government will soon address, understanding the basic requirements discussed above is a good start in ensuring that you are headed in the right direction in complying with the new laws. □

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