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THE UNIVERSITY of TENNESSEE
MUNICIPAL TECHNICAL ADVISORY SERVICE
...in cooperation with the Tennessee Municipal League

#194
HOT topic

March 16, 2010

STIMULUS LAW AFFECTING COBRA EXTENDED UNTIL FEBRUARY 28, 2010

Bonnie Jones, Human Resource Consultant

On February 17, 2009, President Obama signed the initial American Recovery and Reinvestment Act Of 2009 (H.R.1) with an effective date of March 1, 2009. This act and subsequent revisions in HR 3326, the Department Defense Appropriations Act of 2010 (DoDAA), signed December 19, 2008, contain significant changes to COBRA continuation coverage rules for workers who were involuntarily terminated between September 2008 and February 28, 2010. This 15-month subsidy means that more employees can remain on the health plan rolls for longer periods of time as the government aims to make group coverage (COBRA) temporarily more affordable to employees who have been terminated due to no fault of their own.

A few key points:

1. The period for measuring involuntary eligibility must have occurred between September 1, 2008 and February 28, 2010.
2. The extension of the COBRA subsidy was for two calendar months, which expires February 28, 2010.
3. There is no premium reduction for premiums paid for periods of coverage that began prior to February 17, 2009.
4. Employees that were involuntarily terminated in January 2010 and February 2010 will now be eligible for the subsidy.
5. The subsidy ends when the participant is eligible for other coverage or Medicare, after 15 months of receiving premium assistance, or when their COBRA eligibility would otherwise end.

The stimulus bill is having a widespread impact not only on our economy but on American workers terminated by their employers during the relevant period. This move, initially projected to cost tax payers $25 billion, aims to help up to 7 million jobless individuals and their beneficiaries. The new stimulus package requires employers to contact many former employees and beneficiaries who now are eligible for COBRA and, in many cases, offer COBRA for an extended period and at 35 percent of the original premium.

Highlights of the changes are:

- The government will subsidize 65 percent of the cost of COBRA premiums for eligible individuals.
- The act allows individuals involuntarily terminated on or before February 28, 2010 to receive the subsidy, extending the original eligibility deadline of December 31, 2009, by two months.
- The subsidy program is scheduled to end February 28, 2010, unless further extended.
- The subsidy is limited to 15 months (COBRA may be offered for longer periods).

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Prior to this legislation these same employees would have paid 100 percent of their COBRA premiums. Under the new law, employers will pay 65 percent of the premium for group medical, dental and vision coverage. The employee pays the other 35 percent. The employer's portion of the subsidy will be reimbursed later by the federal government through a tax refund or a credit. This is significant when you consider that the average COBRA monthly cost is $400 for individual coverage and $1,200 for family coverage.

ELIGIBILITY

An eligible individual is one whose employment was terminated involuntarily between September 1, 2008 and February 28, 2010, and who otherwise is eligible under COBRA for continued coverage under the former employer's health plan.

An individual's adjusted gross income must be less than $125,000 or $250,000 for married couples filing jointly to be fully eligible for the subsidy. The subsidy is phased out for individuals earning more. Those earning more than $145,000 and couples earning more than $290,000 (if married and filing jointly) will not be eligible for this subsidy.

An individual is no longer eligible for COBRA when:

- Individual COBRA coverage expires (18 to 36 months), or
- The individual becomes eligible for coverage under another group health plan such as Medicare.

How will employees know about this?

Employers must notify employees laid off or terminated since September 1, 2008. Employers were required to notify employees and eligible beneficiaries of their right to buy subsidized COBRA coverage by April 18, 2009, and within 60 days of any change in law. Each qualified beneficiary and individual must be given 60 days to elect benefits. The employer cannot require him or her to make the election sooner than 60 days from notification. The DOL has made four different forms available. Employer's notification requirements are not considered met until the participants have been informed of the extension of COBRA.

The new and updated notices must contain:

- The extension of benefits from nine months to 15 months;
- Explanation that the eligibility period runs through February 28, 2010;
- Information explaining that qualifying beneficiaries have the right to reinstate coverage retroactively by paying subsidized premiums by February 17, 2010 (or within 30 days of when the notice is provided); and
- Information about refunds if applicable. Refunds are available to those participants who paid the full amount of COBRA during the eligibility period.

If an employee already refused COBRA, do we still have to offer the coverage?

Yes. This is where employers and former employees and beneficiaries may be confused.

If an employee or beneficiary refused coverage in the past, they may still elect coverage as long as they left employment during the subsidy period:

September 1, 2008 through February 28, 2010. The premium reduction period in this extension only applies to periods of health coverage that began on or after February 17, 2009 and lasts for up to 15 months.

Can the employer offer more than one coverage option?
Yes. Generally with COBRA administration the employer must offer the employee the same coverage he or she had under the group plan the day before coverage terminated. However, the new legislation contains language that allows the employer to offer more than one health care option as long as the alternative plan is the same or lower cost than the individual's existing group health plan, and the lower priced option must provide for full medical coverage, not just partial coverage, such as dental or vision.

Generally, employers must have 20 employees or more to fall under the COBRA.

Group health plans for employers with 20 or more employees on more than 50 percent of its typical business days in the previous calendar year are subject to COBRA. Both full- and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours the part-time employee worked divided by the hours an employee must work to be considered full time.

What does this mean to former employees and their beneficiaries?
If eligible, this means that the individual can pay 35 percent of the premium billed to continue health benefits through the prior group health plan. The former employer will pay the remaining 65 percent of the COBRA premium for up to nine months and be reimbursed by the federal government.

EMPLOYER LOGISTICS

The 65 percent paid by employer will be reimbursed through a credit against the employer's payroll tax deposits or federal income tax withholding liability, or it will be a refundable credit. The federal government will make a direct payment for any portion of the subsidy that cannot be recovered through a credit.

WHAT EMPLOYERS CAN DO NOW

- Communicate, communicate, communicate.
- Develop a tracking system (formal or informal).
- Identify eligible individuals and beneficiaries (current, past, future).
- Update COBRA notices.
- Develop a notification plan.
- Determine correct premium amounts.
- Amend applicable documents, forms, internal accounting instruments and software.
- Contact your COBRA administrator and ensure compliance in all areas.
- Consider sending out newsletters and articles and other ways to get the word out.
- If you make a mistake make a good faith effort to correct the error. Communicate with your employees and beneficiaries.

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NEW NOTICE REQUIREMENTS

Current COBRA notices must be amended to include:

1. A description of qualified beneficiaries' right to a subsidized premium, including any conditions on this right;
2. A description of the extended election period for beneficiaries who previously declined COBRA continuation coverage; and
3. A description of the qualified beneficiaries option to enroll in different coverage (only if the employer decides such option is permissible).

Modified notices should go out on or before April 18, 2009.

The Department of Labor is expected to issue a model notice by mid-March 2009.

IMPACT ON EMPLOYERS

While many tout this as a win for the jobless, this is expected to create a huge surge in medical claims as those who opt for COBRA typically cost employers $1.50 in claims for every $1 in COBRA premiums collected. Additionally, the administration and compliance costs have not yet been calculated into the projected costs.

CLARIFICATION, GUIDANCE, QUESTIONS

This notice is not intended to cover all aspects of the new legislation. Additional guidance and clarification will come through the Department of Labor and the Centers for Medicare and Medicaid Services. There are many areas of uncertainty. We advise you to make a good faith effort to comply with the new guidelines and to amend your practices as the clarifications are made.

Please visit our Web site at www.mtas.tennessee.edu to search for information on COBRA. Additionally, the Department of Labor has information, links and resources on compliance relative to COBRA.

COBRA continuation coverage laws are administered by several agencies. The departments of Labor and Treasury have jurisdiction over private-sector group health plans. The Department of Health and Human Services administers the continuation coverage law as it affects public-sector health plans. The Department of Labor's interpretive and regulatory responsibility is limited to the disclosure and notification requirements of COBRA.

U.S. Department of Labor
Employee Benefits Security Administration
Division of Technical Assistance and Inquiries
200 Constitution Avenue NW, Suite N-5619
Washington, DC 20210
http://www.dol.gov

The Internal Revenue Service, Department of the Treasury, has issued regulations on COBRA provisions relating to eligibility, coverage and premiums in 26 CFR Part 54, Continuation Coverage Requirements Applicable to Group Health Plans. Both the departments of Labor and Treasury share jurisdiction for enforcing these provisions.

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The Centers for Medicare and Medicaid Services offer information about COBRA provisions for public-sector employees. You can contact the centers at:

Centers for Medicare and Medicaid Services
7500 Security Boulevard
Mail Stop S3-16-26
Baltimore, MD 21244-1850
Phone: (410) 786-3000
http://www.cms.hhs.gov/cobracontinuationofcov/

MTAS has produced a publication called *An Updated Guide to COBRA*. Please contact MTAS if you need assistance locating this resource.

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