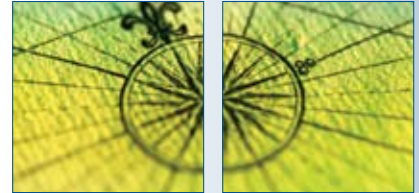


client advisory bulletin

Updates to New COBRA Provisions and How They Affect Your Organization

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Issue 3



Background

The American Recovery and Reinvestment Act (ARRA) allowed for a nine month subsidy toward the cost of COBRA continuation coverage for individuals who lost their health care coverage due to an involuntary termination of employment from September 1, 2008 through December 31, 2009. Please refer to Findley Davies' February 2009 Client Advisory Bulletin. ARRA was amended on December 19, 2009, by the Department of Defense Appropriations Act (2010 DOD Act), which extends the COBRA premium reduction eligibility period for two additional months through February 28, 2010, and increases the maximum period for receiving the subsidy for an additional six months, i.e., from nine months to 15 months.

Assistance Eligible Individuals (AEIs), who reached the end of their reduced premium period prior to the 2010 DOD Act amendment, will have an extension of their grace period to pay the reduced premium as well. To continue their coverage, an individual must pay 35 percent of premium costs by February 17, 2010, or, if later, 30 days after notice of the extension is provided by their employer or plan administrator.

AEIs that may have lost their subsidy and paid the full 100 percent premium in December 2009 may be entitled to a credit for future months of coverage or a reimbursement of the overpayment.

What Employers are Affected?

The 2010 DOD Act applies to all employers including:

- Governmental employers;
- Church plans; and
- Employers with less than 20 employees, whose insured health plans have been subject to State continuation coverage requirements.

Who is Eligible for the Premium Reduction?

The premium reduction is available to individuals, i.e., an employee or a member of his/her family who:

- Has a qualifying event for COBRA continuation coverage that is the employee's involuntary termination at any point from September 1, 2008 through February 28, 2010, and timely elects COBRA coverage; or
- Has a qualifying event under State law that provides comparable continuation coverage.

AEIs that pay 35 percent of their COBRA premium will be considered to have paid the full amount. The 65 percent premium reduction of the full premium is paid by the employer, insurer, or health plan and is reimbursable as a credit against certain employment taxes.

REMINDER: Those who are eligible for other group health coverage such as a spouse's plan or Medicare are not eligible for the premium reduction. An exception, however, is when an individual is covered under a separate dental, vision, counseling, or referral plan, the subsidy will apply. In addition, there is no premium reduction for premiums paid for period of coverage that began prior to February 17, 2009.

What Should I do Now?

Notice Requirements:

Employers/Plan Administrators must provide COBRA subsidy notices to current and former participants and beneficiaries about the premium reduction and other rights. The DOL has provided three model notices that can be found at <http://www.dol.gov/ebsa/COBRAmode notice.html>. Each model notice is designed for a specific group of qualified beneficiaries and includes applicable disclosures as noted below:

1. 2010 DOD Act Updated Model General Notice – Full Version: The full version of the General Notice includes information on the premium reduction and other rights and obligations under ARRA as updated for the 2010 DOD Act. Plans subject to COBRA provisions must provide the updated notice to the following:

About Findley Davies

Findley Davies works with companies to maximize the effectiveness of their human resources strategies. They specialize in helping clients attract, motivate, and retain talent, enhance the effectiveness of HR processes, leverage technology, improve financial performance through effective management of costs, and structure solutions that drive organizational change.

Established in 1969, Findley Davies is owned by a group of senior consultants working from offices in Charlotte, Chicago, Cleveland, Columbus, Greensboro, and Toledo. Its consultants, actuaries, and administrators are accomplished professionals with proven track records in HR, ERISA and tax law, retirement plans, actuarial science, compensation and rewards, communications, health and group benefits, and HR Innovation.

Comments and Questions

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- All qualified beneficiaries who experienced a qualifying event (regardless of the type of qualifying event) at any time from September 1, 2008 through February 28, 2010, who have not yet been provided an election notice.
 - December terminations under plans in which COBRA eligibility would not start until January must also receive this notice. As a result, the 60 day election period starts over again.
2. **2010 DOD Act Updated Model Alternative Notice:** This notice will be provided by insurers to persons who become eligible for continuation coverage under State law. Insurers will modify the notice to conform to appropriate State law requirements.
 3. **Premium Assistance Extension Notice:** This notice is sent to certain individuals who have already been provided a COBRA Election Notice that did not include information about the extension as amended by the 2010 DOD Act. This notice must be provided by February 17, 2010 to:
 - AEs as of October 31, 2009, unless they are in transition period. The transition period begins immediately after the end of the nine months of premium reduction available under ARRA before the amendments were made by the 2010 DOD Act, as long as the premium reduction provision would apply due to the extension from nine to 15 months. Any individual who chose to drop COBRA coverage rather than pay the full premium may now retroactively reinstate that coverage by paying the subsidized premium amount during an extended grace period. The end of the extended grace period depends on when the individual receives the extension notice. Notices must be provided within the first 60 days of transition period.
 - Those with qualifying events on or after October 31, 2009, who lost health coverage, unless they were already provided with a timely updated General Notice.

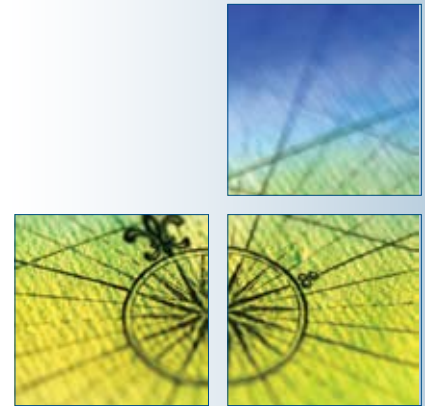
Immediate COBRA Administration Action:

If you handle your own COBRA Administration:

- Review the Sample Notices of the DOL and revise your COBRA Notices to reflect the extended eligibility and premium subsidy requirements.
- Identify those AEs who are in the transition period and prepare and send notice explaining the extension and retroactive reinstatement option.
- Identify those AEs who have dropped COBRA coverage due to nonpayment prior to December 21, 2009. Notify them of the premiums that must be paid to allow for reinstatement.
- Identify all individuals who were eligible for the COBRA subsidy before December 21, 2009, and paid full premium. Recalculate the COBRA premiums with the subsidy to determine whether they have overpaid. If so, develop a process on how the overpayment will be dealt with, i.e., apply to future premiums within 180 days or provide a refund within 60 days.
- Determine how persons eligible for the COBRA subsidy extension will begin paying only the subsidized premium after December 21, 2009.
- Determine how you will notify individuals of an overpayment; how it will be applied, and when they need to pay the full COBRA amount.

If you have outsourced your COBRA Administration:

- Contact your administrator and secure in writing how they will administer the ARRA provision, as amended by the 2010 DOD Act, with respect to sending Notices and the process for requesting the subsidy.



Final Thoughts:

Findley Davies has the expertise and the ability to help you comply with COBRA requirements, including updating your notices, or even administering monthly billing and remittance. For more information, contact the author, Lori Wagner, or your Findley Davies consultant. You may also call the Firm toll free at 800.456.1360.

About the Author

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