

COBRA Premium Subsidy: Districts Must Act By April 18 To Comply

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The new Federal stimulus legislation includes a COBRA premium reduction and subsidy for certain eligible individuals that requires districts to act by April 18, 2009 to comply.

What is the COBRA premium subsidy?

Generally, employees who lose coverage under the district's group health plan due to termination of employment and/or their spouse and dependents may elect to continue group health coverage under the district's plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") for a period of time (generally 18 months after termination of employment) by paying premiums to continue the coverage.

The American Recovery and Reinvestment Act of 2009, enacted on February 17, 2009, provides for a 65% reduction of COBRA premiums for eligible individuals for a maximum period of 9 months. During the reduction period, the eligible individual will only have to pay 35% of the COBRA premium to get COBRA coverage. The district will be required to pay the remaining 65% of the COBRA premium amount for eligible individuals and can claim a credit for the COBRA subsidies paid on the district's Form 941 quarterly Federal withholding tax return.

Who is eligible to receive the COBRA premium subsidy?

The COBRA premium subsidy is available to employees who lost or will lose group health coverage due to *involuntary termination of employment* between September 1, 2008 and December 31, 2009, and their spouse and dependents, provided they elect COBRA coverage, their adjusted gross incomes are below a maximum level and they are not eligible for other group health coverage or Medicare.

NOTE: All districts must comply with the new COBRA subsidy notice requirements, not just districts who laid off or involuntarily terminated employees during the September 1, 2008 through December 31, 2009 time period.

What immediate actions must the district take to comply with the new COBRA premium subsidy rules?

- (1) By April 18, 2009, the district must notify individuals eligible for COBRA who have terminated employment with the district since September 1, 2008, of the COBRA premium. The notice must be sent to a broad group of individuals, not just those involuntarily terminated from employment. In this notice, the district must give eligible individuals a second opportunity to enroll in COBRA coverage within 60 days after the notice is issued and, if applicable, must advise if the individual is permitted to change health insurance coverage options when making a COBRA election. The U.S. Department of Labor is expected to issue one or more sample COBRA subsidy notice(s) by March 19, 2009.

- (2) By April 18, 2009, the district must begin paying the 65% premium subsidy for eligible individuals and must retroactively reimburse eligible individuals for COBRA payments made between February 17, 2009 and April 18, 2009.
- (3) After April 18, 2009 and until December 31, 2009, the district must provide any individual entitled to elect COBRA coverage with a notice regarding the availability of the COBRA premium subsidy.
- (4) For the period from February 17, 2009, and until the final COBRA premium subsidy is paid, the district must maintain required documentation to receive credit for COBRA subsidy payments from Federal withholding tax. Such documentation includes, but is not limited to, proof of receipt of the individual's payment of 35% of the COBRA premium, copies of invoices from the insurer and attestation regarding the involuntary termination of the employee. Additional guidance is expected from the Internal Revenue Service (IRS) on this and other requirements in the near future.

Failure of the district to issue the COBRA subsidy notice could subject the district to penalties of up to \$110 per day and/or excise taxes of up to \$100 per day per notice.

If the individual is denied the COBRA premium subsidy, does the individual have the right to appeal?

Yes. If the district determines that the individual is not entitled to a COBRA premium subsidy, the individual can request an expedited review of the denial by the U.S. Department of Health and Human Services ("HHS") for governmental plans and by the U.S. Department of Labor ("DOL") for private sector plans. The HHS and DOL are required to make a determination regarding the individual's appeal within 15 business days after receiving the individual's completed application for review. The HHS and DOL are expected to make appeals forms available online within the next few weeks.

Where can I find additional guidance from the DOL and IRS?

Additional guidance issued by the DOL can be found at the DOL's COBRA Web page at <http://www.dol.gov/ebsa/COBRA.html>.

Additional guidance issued by the IRS can be found at www.irs.gov and view the alerts under "Update on Recovery Tax Provisions for Individuals and Businesses."

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