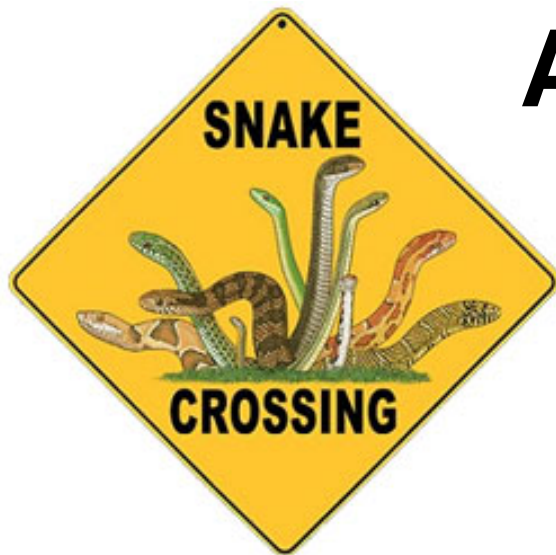




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AVOID “SNAKE” BITES: Federal Stimulus Act Yields New COBRA Requirements

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Introduction

The COBRA premium reduction provision under the American Recovery and Reinvestment Act (ARRA) is a new requirement that has yet to be fully explained by the Department of Labor in regulations.

Thus, some of the information provided may be subject to change.

Continued

Introduction

The ARRA of 2009, signed into law by President Barack Obama on Feb. 17, provides assistance to involuntarily terminated employees and their families with the cost of continuing their group health insurance coverage under COBRA.

Eligibility

Any employee, who was or is involuntarily terminated during the period from Sept. 1, 2008 to Dec. 31, 2009, will only be required to pay 35 percent of the cost of COBRA coverage starting March 1 and continuing for up to nine months. This assistance is only available to an individual who:

Continued

Eligibility

- is involuntarily terminated (and/or their qualified dependants)
- qualifies for COBRA coverage
- elects COBRA coverage

Income Restrictions

If, at the end of the tax year during which assistance is received, the individual has a modified adjusted gross income:

- Exceeding \$145,000 (\$290,000 for joint filers), the amount of the premium reduction must be repaid
- Between \$125,000 and \$145,000 (\$250,000 - \$290,000 for joint filers) the repayment amount will be proportionately reduced

The Benefit

- The other 65 percent of the premium is paid by the employer
- Employer will receive a tax credit for all amounts paid in COBRA premium assistance

Supporting Documentation

- Information on the receipt, including dates and amounts of the assistance eligible individuals' 35 percent share of the premium
- 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

Continued

Supporting Documentation

- In the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the assistance eligible individuals
- 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 eligibility for the subsidy

Continued

Supporting Documentation

- 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

Continued

Supporting Documentation

- Other documents necessary to verify the correct amount of reimbursement

The Tax Credit

Line 12a on the Employer's Quarterly Federal Tax Return (form 941, as revised January 2009, attached) permits employers to report the premium assistance payments made for "assistance eligible individuals" who have paid their 35 percent premium to the employer.

Employer Notices

By April 18, employers are required to notify all employees terminated on or after Sept. 1, 2008 of the right to receive assistance, including those who voluntarily resigned or who did not elect COBRA coverage or allowed coverage to lapse. (DOL sample notices are attached)

Continued

Notices

ARRA mandates that plans notify certain current and former participants and beneficiaries about the premium reduction.

1. General Notice (Full version) Plans subject to the Federal COBRA provisions must send the General Notice to all qualified beneficiaries, not just covered employees, who experienced a qualifying event at any time from Sept. 1, 2008 through Dec. 31, 2009, regardless of the type of qualifying event. This full version includes information on the premium reduction as well as information required in a COBRA election notice.

the additional information required by ARRA. This full version includes information on the premium reduction as well

2. General Notice (Abbreviated version) The abbreviated version of the General Notice includes the same information as the full version regarding the availability of the premium reduction and other rights under ARRA, but does not include the COBRA coverage election information. It may be sent in lieu of the full version to individuals who experienced a qualifying event on or after Sept. 1, 2008, have already elected COBRA coverage, and still have it.

3. Notice in Connection with Extended Election Periods Plans subject to the Federal COBRA provisions must send the Notice in Connection with Extended Election Periods to any assistance eligible individual (or any individual who would be an assistance eligible individual if a COBRA continuation election were in effect) who:

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SECTION A: US DEPARTMENT OF LABOR NOTICES

- Notice of Availability of Model Notices

ATTACHMENT 1: GENERAL NOTICE (FULL VERSION)

- Model COBRA Continuation Coverage Election Notice
- COBRA Continuation Coverage Election Form
- Form for Switching COBRA Continuation Coverage Benefit Options (Optional – Employers need not permit this action)
- Important Information About Your COBRA Continuation Coverage Rights
- Summary of the COBRA Premium Reduction Provisions under ARRA
- Request for Treatment as an Assistance Eligible Individual
- Participant Notification (employee form to notify plan that he/she is eligible for other group health plan coverage or Medicare and, therefore, not eligible for reduced premiums under ARRA)

ATTACHMENT 2: GENERAL NOTICE (SHORT VERSION)

- Model COBRA Continuation Coverage Supplemental Notice
- Important Information About Your COBRA Continuation Coverage Rights
- Form for Switching COBRA Continuation Coverage Benefit Options (Optional – Employers need not permit this action)
- Summary of the COBRA Premium Reduction Provisions under ARRA
- Request for Treatment as an Assistance Eligible Individual
- Participant Notification (employee form to notify plan that he/she is eligible for other group health plan coverage or Medicare and, therefore, not eligible for reduced premiums under ARRA)

ATTACHMENT 3: MODEL NOTICE IN CONNECTION WITH EXTENDED ELECTION PERIODS

- COBRA Continuation Coverage Additional Election Notice
- COBRA Continuation Coverage Election Form
- Form for Switching COBRA Continuation Coverage Benefit Options (Optional – Employers need not permit this action)
- Important Information About Your COBRA Continuation Coverage Rights
- Summary of the COBRA Premium Reduction Provisions under ARRA
- Request for Treatment as an Assistance Eligible Individual
- Participant Notification (employee form to notify plan that he/she is eligible for other group health plan coverage or Medicare and, therefore, not eligible for reduced premiums under ARRA)

To apply for ARRA Premium Reduction, complete this form and return it to us along with your Election Form.

To qualify, you must be able to check 'Yes' for all statements.*

- | | |
|---|--|
| 1. The loss of employment was involuntary. | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. The loss of employment occurred at some point on or after September 1, 2008 and on or before December 31, 2009. | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. I elected (or am electing) COBRA continuation coverage.* | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 4. I am NOT eligible for other group health plan coverage (or I was not eligible for other group health plan coverage during the period for which I am claiming a reduced premium). | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5. I am NOT eligible for Medicare (or I was not eligible for Medicare during the period for which I am claiming a reduced premium). | <input type="checkbox"/> Yes <input type="checkbox"/> No |

*If you checked NO for statement 3, you may still be eligible. See below for more information.

during the period for which I am claiming a reduced premium).
 5. I am NOT eligible for Medicare (or I was not eligible for Medicare during the period for which I am claiming a reduced premium). Yes No

ADDITIONAL ELECTION PERIOD

If your COBRA continuation coverage relates to an involuntary loss of employment from September 1, 2008 through February 16, 2009 and you were eligible for, but did not elect, COBRA continuation coverage **OR** you elected but subsequently discontinued COBRA, you may have the right to an additional 60-day election period. You should receive a new election notice with an Election Form which you **MUST** complete and return. If you believe you should have received this additional notice but have not, contact [enter name of party responsible for COBRA administration for the Plan, with telephone number and address].

Type or print name → _____ Relationship to employee → _____

FOR EMPLOYER OR PLAN USE ONLY

This application is: Approved Denied Approved for some/denied for others (explain in #4 below)
 Specify reason below and then return a copy of this form to the applicant.

REASON FOR DENIAL OF TREATMENT AS AN ASSISTANCE ELIGIBLE INDIVIDUAL

- | | |
|--|--------------------------|
| 1. Loss of employment was voluntary. | <input type="checkbox"/> |
| 2. The involuntary loss did not occur between September 1, 2008 and December 31, 2009. | <input type="checkbox"/> |
| 3. Individual did not elect COBRA coverage.* | <input type="checkbox"/> |
| 4. Other (please explain) | <input type="checkbox"/> |

*If you checked number 3, was individual eligible for, and given, the Additional Election Period described above?

Employer Determinations

It will be the employer's responsibility to determine whether an individual (and their family members) is disqualified due to a voluntary resignation and to notify the individual of this determination. (It may be advisable, when in doubt, to deem the individual eligible.)

Right to Appeal

Anyone turned down by the employer can seek an expedited review of the denial by the U.S. Department of Labor.

Employee Elections and Coverage

Former employees (and/or family members) who did not elect COBRA coverage, or whose coverage ended because payments were not made, will have 60 days following the notice of rights to elect coverage.

Period of Coverage

The period of COBRA coverage will not extend beyond the original period of entitlement calculated from the qualifying event (normally the date employment terminated).

Employer Action Now

- Determine who must receive a notice (all employees terminated on or after Sept. 1, 2008 and their qualified dependants).
- Determine which notice to send.
- Provide notices to employees by April 18.

Continued

Develop Administrative Procedures

- To track elections
- To track subsidy paid
- To reimburse or credit excess premiums paid (65 percent) after Feb. 17
- To reinstate 102 percent COBRA rates after subsidy ends

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An attorney in the firm's Detroit office, Claudia D. Orr focuses her practice primarily in the area of labor and employment law. Her clients include Fortune 500 companies, local governments, tier-one automotive suppliers, nationwide distributors of pharmaceutical products, numerous non-profit agencies, healthcare providers, restaurants, and wholesale food distributors. She also has extensive litigation and appellate experience, and regularly practices before state and federal courts as an advocate.