

COBRA



Are You In Compliance?


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COBRA

Recap:

- COBRA – 1.0
- COBRA – 1.1 ARRA
- COBRA - 1.2 DOD
- COBRA – 1.3 TEA
- COBRA – 1.4 CEA
- Penalties 
- Resources

COBRA 1.0

What is COBRA?

- Employers with 20+ employees
- 50% of its typical business days during the preceding calendar year
- Federal Government exempt
- Churches are exempt within the meaning of 414(e) of the IRS Code

COBRA 1.0

Who is eligible?

- Individuals who are covered under the employer's group health insurance plan the day before a COBRA qualifying event takes place.

COBRA 1.0

What Benefits fall under COBRA?

- Health Insurance Plans
- Dental Insurance Plans
- Stand Alone Vision Plans
- HRA – Health Reimbursement Arrangements
- MFSA – Medical Flexible Spending Accounts.
- Some EAP's (ERISA)

COBRA 1.0

What notices am I required to send?

- Initial Rights Notices within 30 days of the employee electing your benefits.
- Termination or Loss of coverage notices within 30 days of the qualify event date.
- Qualified Beneficiary has 60 days to make an election

COBRA 1.1 ARRA

Coverage's subject to ARRA?

- Health Insurance (ERISA Plan)
- Dental, Vision & Prescription-only plans, HRAs and some EAPs (ERISA)
- HSAs and MFSA are exempt.
- A state program providing comparable coverage (State Mini-COBRA)

COBRA 1.1 ARRA

Who Qualifies?

- Any employee who was involuntary terminated between Sept 1, 2008 and December 31, 2009.
- Involuntary means “a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee’s implicit or explicit request, where the employee was willing and able to continue performing services.

COBRA 1.1 ARRA

Who Qualifies continued ?

Involuntary continued:

- Involuntary reduction of hours to zero, such as lay-off, furlough, or other suspension of employment that results in a loss of health coverage.
- An employee's retirement, if the facts and circumstances indicate that the employer would have otherwise terminated the employee's services and the employee had knowledge that he or she would have been terminated.

COBRA 1.1 ARRA

Who does not Qualify?

- Anyone that resigned
- Anyone that was terminated for “gross misconduct”



COBRA 1.1 ARRA

How much does my company have to pay?

- The employer is responsible for 65% of the premiums for the involuntary terminated employees' (and dependents) medical, dental, vision and prescription only plans, HRA and some EAPs.
- The laws are very clear in order for the employer to be eligible for the 65% credit, they cannot pay *more* than 65% of the premiums.

COBRA 1.1 ARRA

How long does an employer have to pay this subsidy?

- 9 months
- The date following the expiration of COBRA. This does not extend their COBRA eligibility period.
- Subsidy ends when individual becomes eligible for other coverage.
- Medical subsidy continues if individuals only become eligible for dental and vision under another plan.

COBRA 1.1 ARRA

How will my company be credited back the subsidy?

- First, no credits or refunds until the individual(s) have paid their 35%.
- The credit is treated as payment of your payroll tax (IRS form 941) from your matching FICA tax.
- If premium amount exceeds liability for payroll taxes, you receive a credit or refund as an overpayment.



COBRA 1.2 DOD


Department of Defense

Appropriations Act

- Extends period of coverage from 9 – 15 months
- Extends eligibility window for involuntary terminations through February 28, 2010
- Eliminates requirement that eligibility for COBRA also occur within eligibility window period
- Imposes additional notice requirements

COBRA 1.2 DOD DOD Act Extension

- COBRA eligibility no longer needs to occur in window period
- If a employee is terminated anytime in February 2010 they would be eligible for the subsidy.
- Extension of coverage in severance situations.



COBRA 1.2 DOD Transition Period Rules under the (DOD) Act:

- Special rules are included for treatment of assistance eligible individuals who exhausted their full 9 months of premium assistance before the period was extended to 15 months.

COBRA 1.2 DOD Transition Period

- An individual who reaches the end of his or her original premium reduction period will have additional time to pay “extension-related premiums” that were due prior to notice being provided.

COBRA 1.2 DOD

How do I handle an employee paying the full rate after December 19, 2009?

- Under a special rule for the first or second premium payment, the employer must reimburse or provide a credit that reduces subsequent payments.
- This reimbursement must be made within 60 days of the full payment, if it is unreasonable to believe a credit will be used within 180 days.

COBRA 1.2 DOD

What information is required to be in the notices?

- Name, address, telephone number to contact the plan administrator and any other relevant person.
- Description of the extended election period.
- Description of the obligation of the individual to notify the plan administrator of eligibility of other coverage.

COBRA 1.2 DOD

What information is required to be in the new notices?

- Description (displayed in a prominent manner) of individual(s)' right or entitlement to a reduced premium.
- Description of the option for the individual(s) to enroll in different coverage (if the employer permits).
- Must include forms necessary to establish eligibility.

COBRA 1.2 DOD

Do all of our COBRA notices
need to be revised?

- Initial notices must be revised making all the changes prominent.
- Election notices, again making the information prominent.
- SPD (Summary Plan Description)
- SMM (Summary Material Modifications)

COBRA 1.2 DOD

How does the DOL handle someone being denied the subsidy by my company?

- Once the DOL is notified of the denial, the DOL has 15 business days after receipt of notification to make a determination of individual(s) eligibility.

COBRA 1.3 TEA

Temporary Extension Act

- Passed March 2, 2010
- Extended Involuntary Terminations from Sept 1, 2008 – March 31, 2010
- The extension act amended the definition of AEI's to add qualifying events that are a reduction of hours occurring within the eligibility period (Sept 1, 2008 –March 31, 2010)

COBRA 1.3 TEA

Temporary Extension Act

- NEW!!! Protection for Employers making involuntary termination determinations.
- TEA amends CODE Section 6432 (addressing reimbursement by the IRS of premium assistance paid by employers)

COBRA 1.3 TEA

What notice should I have sent?

- **Plan Administrators or TPA's should the new ARRA notices including information about the new election period to affected individuals within 60 days of the individuals involuntary termination.**

COBRA 1.4 CEA

Continuing Extension Act

- On April 15, 2010 the bill was signed to extend the COBRA subsidy through May 31, 2010
- Retro eligibility for individuals who lost their jobs after the prior TEA expired on March 31, 2010

Penalties - DOL:



What consequences could my company face for noncompliance?

- ERISA - \$110 a day per covered member
- TEA also amends ARRA to make clear that either affected individuals or the DOL may sue.

Penalties - IRS:



What consequences could my company face for noncompliance?

- IRS - \$100 a day per individual effective Jan 1, 2010 all COBRA violations require Form 8928 to be filed with the IRS.
- ERISA and PHSA law suits

Penalties - IRS:



When am I required to file this form?

- On or before a liable employer's (or in some cases insurer's, HMO's or TPA) income tax return filing due date, for violations related to COBRA, HIPAA, GINA, The Newborn's and Mothers Health Protection Act, and Michelle Law.
- An extension to file income taxes does not extend the date for filing Form 8928.

Penalties - IRS:

What Should Employers Do?

- Employers and Administrators should have procedures and processes in place that are designed reasonable to ensure compliance.
- If violations occur the Employer and other responsible parties must take action promptly to correct the violation within 30 days.

Penalties - IRS:

What Questions Should I Ask Our TPA regarding COBRA Compliance?

- You want to know the TPA has sent all the proper notices and in a timely manner regarding the TEA enactment.
- Ask if the TPA will indemnify the employer for penalties and associated costs in the event of non-compliance with the revised COBRA subsidy rules.

Where Can I Find Additional Resources?

- model notices

www.dol.gov/ebsa/COBRAmodeInotice.html

- ***Form 8928***

www.irs.gov

Thank You!

