

WHAT EMPLOYERS NEED TO KNOW ABOUT THE NEW COBRA SUBSIDY EXTENSION

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The following are answers to frequently asked questions from employers about the extension of the COBRA subsidy provisions as well as examples illustrating how the subsidy extension applies to common situations encountered by employers. Note, this information is based on the language of the bill. We will update you as new guidance becomes available.

1. Does the new legislation change who is eligible for the COBRA subsidy?

Yes. Under the prior legislation, individuals who were involuntarily terminated between September 1, 2008 and December 31, 2009 and who lost group health plan during this time period were eligible to receive the subsidy. The new legislation extends the time period for qualification from December 31, 2009 to February 28, 2010 and removes the requirement that the individual's loss of group health plan coverage also be on or prior to February 28, 2010. The individual's loss of group health plan coverage, however, must still be in connection with the involuntary termination.

The following examples illustrate the new eligibility provisions:

Employee is terminated on December 29, 2009 but does not lose group health plan coverage until January 1, 2010.
Employee is eligible for the subsidy.

Employee is terminated on February 15, 2010 but does not lose group health plan coverage until March 1, 2010.
Employee is eligible for the subsidy.

Employee is terminated on February 28, 2010 but his employer continues his health insurance for six months through August 31, 2010. The Employee loses group health plan coverage and becomes eligible for COBRA on September 1, 2010. Employee is eligible for the subsidy beginning September 1, 2010.

2. Does the new legislation change the length of the COBRA subsidy?

Yes. An individual who qualifies for the subsidy may now receive up to 15 months of the subsidy. However, the subsidy may still be terminated prior to the expiration of the 15 months for events such as eligibility for other group health coverage or Medicare or the individual's failure to timely pay his/her portion of the COBRA premium.

3. Does the new legislation change the amount of the COBRA subsidy?

No. The subsidy continues to be 65% of the amount charged to the individual. Therefore, the individual is still responsible for 35% of the premium, including the 2% administrative charge.

4. Does the new legislation lengthen the amount of time an individual may receive COBRA?

No. Individuals who are involuntarily terminated and eligible for federal COBRA continue to be eligible for 18 months of COBRA coverage (unless lengthened due to a second qualifying event). Individuals employed by small employers and who are eligible for Iowa continuation coverage, continue to be eligible for only 9 months of coverage. The extension of the COBRA subsidy provisions to 15 months does not lengthen the amount of Iowa continuation coverage an individual may receive.

Employee is terminated on January 1, 2010 and loses group health plan coverage effective February 1, 2010. Employee worked for an employer with less than 20 employees. Employee is eligible for 9 months of Iowa continuation coverage and may receive the subsidy during these 9 months. Employee's continuation coverage will terminate on November 1, 2010. Although the subsidy was extended to 15 months, Employee has exhausted his Iowa continuation coverage and is no longer eligible for continuation coverage or the subsidy.

Employee was terminated on September 1, 2008 and elected federal COBRA coverage effective September 1, 2008. Employee first became eligible for the subsidy on March 1, 2009. Employee's COBRA coverage and subsidy expires on March 1, 2010. Employee receives the subsidy for 12 months, not 15 because Employee's COBRA coverage has been exhausted.

5. What if an individual's original 9 month subsidy expired in November and he paid 100% of the COBRA premium in December? Now that he is entitled to an additional 6 months of the subsidy, how do we handle the December premium?

Employers who receive the full premium for coverage in December or January must either return the overpayment to the individual or credit it to the individual's account for their use within 180 days.

Employee became eligible for the subsidy on March 1, 2009. Under the previous legislation, Employee's subsidy expired on November 30, 2009 and Employee paid 100% of the COBRA premium for December's coverage on December 1, 2009. Under the new legislation, Employee is now eligible for an additional 6 months of the subsidy and was only required to pay 35% of the COBRA premium for December. The employer should either refund 65% of the premium to Employee or apply the excess to Employee's January and February premiums.

6. What if an individual's original 9 month subsidy expired in November and he allowed his COBRA coverage to terminate for failure to pay the full COBRA premium in December?

Under COBRA an individual has a 30 day grace period to pay COBRA premiums. This means that an individual whose COBRA premium is due on the first of the month actually has until the end of the month to pay his COBRA premiums. This grace period has been extended for individuals whose original 9 month subsidy period ran out prior to the extension of the COBRA subsidy. To continue their COBRA coverage, these individuals must pay their 35% of December's premium costs by February 17, 2010 or, if later, 30 days after notice of the extension is provided by the group health plan administrator. Note, the new legislation does not address an individual's failure to timely pay January's premium; however, we anticipate that the Department of Labor will interpret the law as allowing individuals to pay their January premiums by February 17, 2010 or 30 days from receipt of the notice, whichever is later, given that these individuals may not be notified of the extension until the end of January. We will notify you if this advice changes based on guidance from the Department of Labor.

Employee became eligible for the subsidy on March 1, 2009. Employee's original 9 month subsidy expired on November 30, 2009. Employee could not afford the COBRA premium without the subsidy and therefore, paid nothing in December. Employee's COBRA coverage terminated effective December 1, 2009 for non-payment of premiums. On January 5, 2010 Employee receives a

letter in the mail from his former employer informing him of the COBRA subsidy extension. Employee may reinstate his COBRA coverage retroactive to December 1, 2009 if he pays his 35% portion of his December COBRA premium by February 17, 2010. Although the legislation does not address January premiums, if Employee does not pay the 35% of the January premium by January 31, 2010, we believe the Department of Labor will interpret the law as allowing the Employee to pay his 35% portion of the January premium by February 17, 2010.

Same example as above, however, his former employer does not provide him with notice of the subsidy extension until January 25, 2010. Employee has until February 24, 2010 to reinstate his COBRA coverage retroactive to December 1, 2009 by paying his 35% of the December COBRA premium. Again, although the new legislation does not address the January premium, if Employee does not pay the 35% of the January premium by January 31, 2010, we believe the Department of Labor will interpret the bill as allowing the Employee to pay his 35% portion of the January premium by February 24, 2010.

7. Are individuals who allowed their COBRA coverage to lapse prior to the expiration of the original 9 month subsidy allowed to reinstate their coverage?

No. Individuals are only allowed to reinstate their coverage because of the extension if they were in a “transition period”, meaning their original 9 month COBRA subsidy had expired prior to the legislation extending the COBRA subsidy and they had not allowed their COBRA to lapse prior to the expiration of the 9 month subsidy. Individuals who lost their COBRA due to failure to pay their 35% portion of the premium are not eligible to reinstate their coverage.

Employee became eligible for the COBRA subsidy on March 1, 2009. Employee failed to pay his 35% portion of the September COBRA premium and his COBRA terminated on September 30, 2009. Employee is not allowed to reinstate his COBRA coverage under the new law.

8. What are an employer’s notice obligations under the new legislation?

Employers must update their current COBRA election notices to conform to the law’s changes. Employers should use these updated COBRA election notices for any individual experiencing a qualifying event (regardless of whether the qualifying event is a termination of employment) now through February 28,

2010. Additionally, employers must notify the following individuals of the changes made to the COBRA subsidy by the new legislation:

- Individuals who are currently “assistance eligible individuals” (i.e., receiving the subsidy) must be provided with a notice informing them of the extension by February 17, 2010;
- Individuals who experience a termination of employment (voluntary or involuntary) on or after October 31, 2009 and lose health insurance coverage in connection with this termination must be provided with notice by February 17, 2010;
- Individuals who experience a qualifying event on or after December 19, 2009 (date new legislation enacted) must receive notice of the new provisions consistent with COBRA’s normal election notice timing rules. This notice can simply be an updated COBRA election notice, or if the COBRA election notice has already been given to these individuals without the updated information, they can simply receive notice of the subsidy extension.
- Individuals whose original 9 month subsidy ended before December 19, 2009 must be given notice of the new subsidy provisions within 60 days of the first day their 9 month subsidy expired. For most individuals, their 9 months expired on December 1, 2009, making this notice due for most individuals on January 29, 2010. This notice must explain the right to reinstate coverage by paying the missed premiums by February 17, 2010 or 30 days from the date they receive this notice, whichever is later.

The following examples illustrate the new notice requirements:

Employee was terminated in February 2009, elected federal COBRA, and began receiving the COBRA subsidy on March 1, 2009. Employee’s subsidy expired on November 30, 2009. Employee paid 100% of the December premium. Employee must receive a notice of the subsidy extension by January 29, 2010.

Same example as above except Employee does not pay his December premium and allows it to lapse because he can’t afford the 100% payment. Employee must receive a notice of the subsidy extension by January 29, 2010.

Employee was terminated in August 2009, elected federal COBRA, and began receiving the COBRA subsidy on September 1, 2009. Employee is still on COBRA. Employee must receive a notice of the subsidy extension by February 17, 2010.

Employee voluntarily terminated his employment on October 31, 2009 and was subsequently given a COBRA election notice. Employee declined COBRA coverage. Employee must receive a notice of the subsidy extension by February 17, 2010 even though he voluntarily terminated his employment and declined COBRA. The law states that anyone who has a qualifying event that is a termination of employment (regardless of whether voluntary or involuntary) must receive notice of the new provisions by February 17, 2010.

Employee's dependent ceases to meet the plan's definition of "dependent" on December 21, 2009 and he notifies his employer on December 23, 2009. Employer provides the dependent a COBRA election notice on December 28, 2009 that does not include the new extension provisions. The dependent must be provided with either a revised election notice incorporating the subsidy extension provisions or separate notice of the extension provisions by January 6, 2010 (date COBRA election notice must be provided under normal COBRA rules).

Employee is terminated on December 31, 2009. Employer updates its COBRA election notice to incorporate the new extension provisions and provides the Employee with this revised election notice on January 15, 2010. No additional notice is required.

9. Is the Department of Labor going to publish model notices for the new notice requirements?

Unknown. While the Department of Labor issued model notices to assist employers in implementing the original COBRA subsidy provisions, the Department was specifically required to do so under that legislation. The new legislation does not have any requirement on the Department to issue model notices and in the communications published to date by the Department they have stated no intent to do so.

10. Will we see another extension of the COBRA subsidy provisions?

Possibly. The House has passed a provision as part of an appropriations bill extending the subsidy through June 30, 2010. The Senate is expected to act on this bill in early 2010. We will keep you apprised of any future developments.

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