

**COBRA SUBSIDY INFORMATION
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA)
UPDATED 4/1/2009**

EMPLOYER ACTION REQUIRED

**Liberty Union Life Assurance Company
ARRA Guidelines**

The following is intended to provide a summary of the new COBRA/ARRA subsidy requirements and guidelines for all COBRA eligible employer group health plans. **Timely action is required by employers on or before April 10, 2009.** Liberty Union has made changes to our functions involving COBRA administrations services as a result of this new law. Please review this notice and respond as required. If you have questions contact our office at 1-800-482-0945.

The recently enacted economic stimulus law, The American Recovery and Reinvestment Act of 2009 (ARRA), includes a 65% subsidy for COBRA premiums paid by qualified assistance eligible individuals who lose group coverage due to a covered employee's involuntary termination of employment at any time from September 1, 2008 through December 31, 2009. For individuals with a loss of coverage prior to September 1, 2008 - this subsidy will not apply.

With this notice you will find information provided by the U.S. Department of Labor which includes:

Premium Reduction Fact Sheet
COBRA ARRA Model Notices (refer to the website link below for access in .doc format)
Premium Reduction Frequently Asked Questions For Employees
IRS Information on COBRA Premium Reduction
General COBRA Frequently Asked Questions for Employers

Additional information is available on the following websites:

www.dol.gov/COBRA or call 1-866-444-3272
www.irs.gov/
www.cms.hhs.gov/COBRAContinuationofCov
www.dol.gov/ebsa/COBRAModelNotice.html

DETERMINE IF THE GROUP HEALTH PLAN IS SUBJECT TO COBRA

As many employers have downsized staffing in recent years it is important to review whether your group health plan remains subject to COBRA requirements.

Plan Coverage - Group health plans for employers with 20 or more employees on more than 50 percent of its typical business days in the previous calendar year are subject to COBRA. Both full and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction on an employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full-time.

SUMMARY OF THE COBRA SUBSIDY (ARRA) LAW:

An "assistance-eligible individual" is entitled to receive a 65-percent subsidy for continuation coverage premiums for up to nine months.

An assistance-eligible individual is any qualified beneficiary who elects COBRA and 1) has a loss of group health coverage as a result of a covered employee's involuntary termination of employment (other than for gross misconduct) between September 1, 2008 and December 31, 2009, and 2) is otherwise eligible for COBRA coverage.

An individual whose modified adjusted gross income exceeds \$145,000 (or \$290,000 for joint filers) cannot retain the benefit of the COBRA subsidy, and the benefit is reduced proportionately for those with modified adjusted gross incomes between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers).

An assistance-eligible individual can be any qualified beneficiary (employee, spouse and dependent children). Each individual can independently receive a subsidy.

Eligibility for the subsidy can terminate early if: 1) the assistance-eligible individual ceases to be entitled to COBRA coverage; or 2) the individual becomes eligible for Medicare or other group health coverage.

If becoming eligible for other group health coverage, the subsidy eligibility can terminate even if: 1) the other plan has an exclusion or limitation affecting a pre-existing condition of the individual; and 2) the individual does not elect such coverage. However, other group health coverage for this purpose does not include: dental, or vision only coverage, counseling and/or referral services, health flexible spending accounts or coverage for an employer's on-site medical facility that consists primarily of first-aid services, prevention and wellness care, or similar care.

A special 60-day election period exists for a qualified beneficiary who is eligible for a reduced premium and who does not have COBRA coverage in effect as of February 17, 2009 (the enactment date).

An employer may elect to make a special enrollment period available for assistance-eligible individuals to take a lower level of group health plan coverage.

The person to whom premiums are payable shall be reimbursed by the amount of the COBRA premium that is not paid by an assistance-eligible individual on account of the premium reduction. An entity is not eligible for the subsidy reimbursement until it has received the reduced premium payment from the individual.

COBRA election notices must be modified to include information on the premium subsidy program.

A new notice must be given to qualified beneficiaries entitled to a special election period after enactment.

The new rules can be enforced through lawsuits under ERISA, and the plan administrators (employers) are subject to penalties for late notices.

Certain governmental agencies are given the authority to issue implementing regulations and other guidance.

For a period of up to nine months an assistance-eligible individual is treated as having paid COBRA coverage in full if the individual actually pays 35 percent of the applicable premium. The other 65 percent of the premium is paid by the government via a payroll tax credit.

The credit is effective for premiums for periods of coverage beginning after enactment (February 17, 2009). The law defines a "period of coverage" to mean the monthly or shorter period of coverage for which premiums are charged by the plan. If a plan charges for a full month of coverage, the law would be effective March 1, 2009. If a plan charges by the day for COBRA coverage, then the law would be effective beginning after February 17, 2009.

HOW THE PREMIUM TAX CREDIT WORKS

If Liberty Union Life Assurance Company administers COBRA on the employer's behalf; Liberty Union has collected monthly COBRA premiums direct for the qualified beneficiaries up to this time.

IMPORTANT CHANGE: Effective immediately all assistance-eligible individuals will receive notification to pay their applicable 35 percent COBRA/ARRA premiums directly to their employer. The employer is eligible for 65 percent reimbursement.

Step 1

The employer to whom the premiums are payable is to be reimbursed by the amount of premiums for COBRA coverage that is not paid by an assistance-eligible individual. If the qualified beneficiary pays 35 percent of the premium, the employer to which the premium is paid can get reimbursed for the other 65 percent.

Step 2

This reimbursement is taken as a credit against the employer's liability for payroll tax deposits (including wage withholdings and FICA taxes). If the credit exceeds the amount of payroll tax deposits, then the employer will get a direct refund. The employer is not eligible for the subsidy reimbursement until the assistance-eligible individual has actually paid their portion to the employer. Although the credit against the tax deposit is taken at the same time as the payroll deposits would be due, employers will generally report these amounts on their quarterly Forms 941 which the IRS has updated for this purpose.

An overstatement of a COBRA premium reimbursement is a payroll tax violation subject to penalties. It is important not to claim assistance-eligible individual COBRA payments until after the employer has received payments.

WHAT IS AN INVOLUNTARY TERMINATION?

The definition of "involuntary termination" remains somewhat unclear. The determination as to whether a loss of coverage occurred due to involuntary termination will be made by the employer and the assistance-eligible individual. In the event of a disagreement, the Secretary of Labor (or the Secretary of Health and Human Services) will provide for an expedited review within 15 business days after receipt of the application for eligibility.

A termination for gross misconduct does not qualify.

Temporary layoff: This is where an employer intends to re-employ the individuals once things turn around, as opposed to a permanent termination. Often, recall rights are included as part of a layoff. It is not clear whether temporary layoff is included within the definition of "involuntary termination" We will continue to monitor for further guidance.

Layoff: A layoff refers to a severance of the employment relationship initiated by an employer and should be considered an involuntary termination of employment.

Severance Package: When an employer offers employees the opportunity to leave the workplace with a "package" whereas if not enough employees took the deal, the employer would initiate involuntary terminations - this situation is considered involuntary termination of employment.

Voluntary Termination: When an employee voluntarily leaves employment the individual may be eligible for COBRA continuation but will not qualify as an assistance-eligible individual for purposes of the COBRA subsidy.

HOW LONG DOES THE SUBSIDY LAST?

The subsidy does not extend the length of time an individual is eligible for COBRA from the date of the initial qualifying event, even if the individual did not initially elect COBRA prior to eligibility under the now available subsidy. The subsidy is available for 9 months beginning on or after the enactment date of 2/17/2009.

The subsidy will terminate beginning on or after the earlier of:

1. The date that is nine months after the first day which the subsidy applies (for example if the subsidy is available beginning March 1, 2009, it will last through November 30, 2009 The member may continue COBRA at 100 percent of premium for the remaining COBRA eligible months.
2. the end of the maximum required period of COBRA coverage; or
3. the date that the assistance-eligible individual becomes entitled for Medicare benefits or health coverage available under another group health plan.

NOTICE REQUIREMENTS FOR ASSISTANCE-ELIGIBLE INDIVIDUALS

It is the responsibility of the assistance-eligible individual to notify the employer if they become eligible for other group health coverage or Medicare. Failure to provide notice in a timely manner will permit COBRA coverage subsidy to continue after the individual is no longer eligible. In this instance, the individual will be liable for a penalty equal to 110 percent of the subsidy that is provided after eligibility terminates.

HOW AND WHEN TO ELECT SUBSIDY?

SPECIAL ELECTION PERIOD – For Involuntary Termination Before Enactment With No COBRA Election in Effect

The law imposes an extended election period for those assistance-eligible individuals who do not have a COBRA election in effect on the enactment date of February 17, 2009. The Special Election Period begins on February 17, 2009 and ends 60 days after notice of this election right is provided. Notices must be provided by April 18, 2009.

The Special Election Period is only available to individuals entitled to COBRA coverage due to a covered employee's involuntary termination of employment from September 1, 2008 through February 17, 2009.

The Special Election Period is available to those individuals that never elected COBRA before February 17, 2009 and also to those individuals that elected COBRA prior to February 17, 2009 but are no longer covered because the individual failed to pay premium.

PAYING THE INITIAL PREMIUM

The ARRA Special Election right does not appear to amend the general COBRA premium payment rules at this time. Under the general COBRA rules an individual has 45 days to pay premium after the initial COBRA election is made. Therefore the individual has 60 days from the date of notice to make an election with an additional 45 days to pay the applicable premium.

PRE-EXISTING CONDITION LIMITATIONS

Under the Special Election Period the new law provides that the period between the assistance-eligible individual's qualifying event and the enactment date is not a break in coverage. As such, an individual can elect COBRA and avoid a gap in coverage of 63 days or longer reducing or eliminating pre-existing condition limitations.

INVOLUNTARY TERMINATION BEFORE ENACTMENT DATE WITH PREVIOUS COBRA ELECTION

For assistance-eligible individuals that previously elected COBRA and paid the applicable premium in full, special rules apply. The individual will be entitled to a reimbursement from the employer for amounts paid in excess of 35 percent beginning February 17, 2009. Once the eligibility as an assistance-eligible individual is determined, the employer will have a maximum of 60 days in which to reimburse the individual.

As an alternative arrangement, the employer may credit subsequent premiums due for coverage. But if a credit is applied and it is not reasonable to assume the credit will be used for health coverage within 180 days of the date that the full premium was paid then the employer must provide a full refund of the excess amount within 60 days. It appears the easiest approach may be to provide the refund to the individual in all cases and apply for the payroll tax credit under the same procedures for claiming the payroll tax credit.

ADDITIONAL SPECIAL ELECTION RIGHTS

For employers offering more than one health plan to employed workers:

An assistance-eligible individual could within 90 days of being notified of this right, elect to change the actual coverage available in order to drop down to a lower cost option. This does not appear to extend the initial election requirement of 60 days meaning the assistance-eligible individual must elect COBRA within 60 days from the date of notice. It does however permit an additional 30 days (total of 90 days) to select a less costly lower level of coverage. The benefit change will go into effect on the first day of the month following receipt of the elected benefit plan change.

MODEL NOTICE OF RIGHTS TO COBRA CONTINUATION COVERAGE PREMIUM SUBSIDY

The Model Notices can be found at: www.dol.gov/ebsa/COBRAmodeNotice.html

LIBERTY UNION COBRA/ARRA ADMINISTRATION GUIDELINES

FOR GROUPS LIBERTY UNION DOES NOT PROVIDE COBRA ADMINISTRATION:

If the employer administers COBRA, the employer must provide the following information to Liberty Union Life for enrollment of an assistance-eligible individual:

1. Copy of original COBRA election form
2. Copy of COBRA/ARRA election form
3. Completed Request For Treatment As An Assistance Eligible Individual Form
4. Date of qualifying event
5. Effective date of COBRA/ARRA
6. If the individual was covered under a group health plan prior to the group effective date with Liberty Union Life, the individual must complete a Liberty Union Enrollment Application and supply a Creditable Coverage Certificate from the prior group health plan. This will provide Liberty Union with required information for proper enrollment of the employee and eligible dependents.

For members electing COBRA under ARRA, the employer must collect the 35% COBRA premium from each qualified beneficiary. The employer will remit 100% of the premium due to Liberty Union (65% payable by the employer) before the end of the premium grace period. Liberty Union cannot accept the premium unless 100% is remitted (35% from the participant and 65% from the employer). Failure to remit 100% of billed premium may cause group health coverage to lapse for all covered persons.

IF LIBERTY UNION ADMINISTERS YOUR GROUP COBRA:

If Liberty Union administers COBRA on the employer's behalf the notices will be provided by Liberty Union. Liberty Union must have a current COBRA Administration Election Form on file signed by the group contact within the last twelve months. For employer's that did not respond or indicated the group was not COBRA eligible - Liberty Union will not provide COBRA/ARRA Model Notices. If the group contact is unaware of the COBRA Administration election selection, please contact the Eligibility Department at 248-585-7900 for assistance.

Assistance-eligible individuals must pay their portion of the COBRA premium directly to the employer group. Previous to ARRA, Liberty Union permitted direct COBRA continuation payment from the COBRA participant. As the subsidy is payable to the employer group, the employer must collect and remit 100% of billed COBRA premiums with the monthly group premium remittance. All COBRA participants will receive notification to remit their portion of premium to the employer directly. Failure to remit 100% of billed premium may cause group health coverage to lapse for all covered persons.

WHAT EACH EMPLOYER MUST DO:

1. COBRA Subsidy Model notices will be prepared by Liberty Union notifying assistance-eligible individuals of the Special Election Period (for individuals previously declining or failing to pay COBRA when initially entitled). A separate notice will be provided to those assistance eligible individuals who had an involuntary loss of coverage since 9/1/2008 who have elected and continue to pay COBRA.

If your group health plan became effective with Liberty Union prior to September 1, 2008, we will have record of all terminations potentially eligible for the COBRA/ARRA subsidy. Upon receipt of the assistance-eligible individuals COBRA election, Liberty Union will require the employer's certification of involuntary termination. The form entitled, REQUEST FOR TREATMENT AS AN ASSISTANCE ELIGIBLE INDIVIDUAL will be forwarded to the group contact for review, verification and return to Liberty Union within 3 business days.

Your monthly group premium billing will identify all COBRA participants (with and without COBRA subsidy) separately with applicable premiums due. All COBRA participants including the assistance-eligible individuals will be notified in writing to pay the employer directly. The employer is then responsible to pay the additional 65% for all assistance-eligible participants and remit non-subsidy COBRA payments to Liberty Union Life.

- | |
|---|
| <ol style="list-style-type: none">2. If your group health plan with Liberty Union went into effect after 9/1/08 - the employer must provide Liberty Union with ample information for each employee (name, address, date of termination, type of termination and date of original COBRA notice) allowing preparation of the COBRA Subsidy Model Notice. This information must be provided to Liberty Union Life before April 10, 2009. Liberty Union is not responsible for penalties resulting from untimely notices if the employer fails to provide all necessary information on or before April 10, 2009. |
|---|

3. For assistance-eligible COBRA individuals who previously elected and paid for COBRA, the employer must reimburse 65 percent of the premium as of February 17, 2009 to the individual within 60 days of the date the subsidy election is received. A credit for future premiums due may be applied providing the individual will exhaust the credit by continuing COBRA.

For groups which Liberty Union provides COBRA administration services, the required Model Notices will be sent to ALL potential assistance-eligible individuals by April 18, 2009.

If you have any questions concerning this new law or the administration requirements - please contact Liberty Union at:

1-800-482-0945
or
Fax: 248-583-4647

The websites provided in this notice are updated frequently providing additional guidance for compliance with ARRA. Liberty Union will monitor new developments providing updates to this notice as needed.