

COBRA ACTION ALERT

APRIL 2009

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (“the Act”), also commonly referred to as the Federal Stimulus Package, which requires employers to offer a temporary COBRA subsidy to certain employees.

The Act provides that employees who are or have been terminated “involuntarily” between September 1, 2008 and December 31, 2009 and their dependants are eligible for a subsidy of 65% of the premium for group health insurance in the Plan in which they participated at the time of termination. Beginning on or after February 17, 2009, the subsidy is available for up to 9 months, but can end sooner, such as when the maximum continuation coverage period under COBRA expires. Employers initially pay the subsidy amount on behalf of the former employee, and recover the subsidy in the form of a credit against payroll taxes (income tax withholding and FICA taxes). For coverage after February 17, 2009, employees that already paid the full COBRA premium are entitled to reimbursement from the employer (or a credit against future payments) for the excess over which the employee is required to pay under the Act.

Employees who were involuntarily terminated between September 1, 2008 and December 31, 2009 and who did not elect COBRA coverage are entitled to a new election period under the Act. The Act also gives involuntarily terminated employees and their dependents 90 days to select coverage under a different, lower-cost coverage option than the one they were enrolled in at the time of involuntary termination if such lower-cost option is offered by the employer.

There are some income restrictions on the subsidy which do not apply to employees with an adjusted gross income of more than \$125,000 (or \$250,000 for joint filers).

Below is a checklist of actions that employers should take to comply with the Act.

- Determine all employees involuntarily terminated since September 1, 2008. Categorize them:
 - Those that **did not** elect COBRA coverage have a new election period under the Act and are eligible for the subsidy.
 - Those that **did** elect COBRA coverage when initially eligible (regardless of whether or not they are still enrolled) are eligible for the subsidy (not retroactive).

- Send appropriate notices (including the availability of premium reductions and the option to select different coverage if applicable) and forms to involuntarily terminated employees depending on categorization. Model notices have been posted by the U.S. Department of Labor at www.dol.gov/ebsa/COBRAModelNotice.html.

- Update payroll tax reporting system or processes to account for reimbursable subsidies.

[MacDonald Illig Jones & Britton's Labor and Employment Group](#) attorneys stand ready to assist employers and benefit administrators in complying with the new requirements.

For more information, please contact Attorney Daniel M. Miller at dmiller@mijb.com or 814-870-7708.

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