



PAYROLL CURRENTLY

The Biweekly Payroll Compliance Publication of the American Payroll Association

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IRS Issues COBRA Premium Subsidy Q&As for Employers: Part 3

In recent issues of PAYROLL CURRENTLY, we included questions and answers for employers on the new COBRA premium subsidy under the American Recovery and Reinvestment Act of 2009 (ARRA; see [PAYROLL CURRENTLY, Issue No. 4, Vol. 17](#)). This article contains questions and answers from an expanded document offering additional guidance. The complete document, *COBRA: Answers for Employers*, is available on the IRS website at www.irs.gov/newsroom/article/0,,id=204708,00.html.

Administration and eligibility

Q. Does the subsidy apply to medical and dental plans or medical only?

A. The subsidy is generally available for COBRA continuation coverage under any group health plan, including medical, dental, and vision coverage. However, it does not apply to a flexible spending arrangement (FSA) offered under a cafeteria plan.

Q. If an employer changes the insurance offered under its group health plan, can the subsidy apply to an assistance eligible individual's coverage under the new insurance?

A. Yes, as long as the individual's coverage under the new insurance qualifies as COBRA continuation coverage and the individual otherwise continues to be eligible for the subsidy.

Q. What is the general process by which an assistance eligible individual applies for the subsidy?

A. A group health plan is required to notify any individual with a qualifying event occurring during the period from September 1, 2009, through December 31, 2009, of the availability of the subsidy. If an assistance eligible individual already has COBRA coverage in effect on February 17, 2009 (date of enactment of ARRA), the individual should receive a special notice of the availability of the subsidy. The notices will explain how to apply for the subsidy.

Q. If an individual's involuntary termination of employment took place on or after September 1, 2008, and before February 17, 2009, and the individual became eligible for COBRA coverage during that period, but the individual doesn't have COBRA coverage in effect on February 17, 2009, can the individual still elect COBRA coverage and get the subsidy?

A. Yes, if the individual's right to continuation coverage is provided under federal law. In that case, the individual will be given a new special election period to elect COBRA coverage and to pay reduced premiums as an assistance eligible individual. The special election period applies regardless of whether the individual failed to elect COBRA coverage previously or elected COBRA coverage and later discontinued it. The individual should be notified by April 18, 2009, of the new opportunity to elect COBRA coverage. The individual will then have 60 days after the notice to elect COBRA coverage and apply for the subsidy.



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Q. What agency is responsible for providing guidance on these notice requirements?

A. The Department of Labor (DOL) is responsible for providing guidance on notices that must be provided about the availability of the subsidy and, if applicable, the special COBRA election period. For more information and model notices, visit www.dol.gov/COBRA. You can also call 1-866-444-3272 to speak with a benefits advisor from DOL's Employee Benefits Security Administration.

Q. How will the COBRA premium subsidy be provided retroactive to September 2008?

A. The COBRA premium subsidy is not retroactive. The earliest it can apply is for the first period of coverage beginning on or after February 17, 2009, the date of enactment of ARRA. In addition, if an individual elects COBRA coverage under the special COBRA election period, the coverage is effective only for the first period of coverage beginning on or after February 17, 2009. In the case of a health plan that provides coverage on a calendar month basis, the first period of coverage is the month beginning March 1, 2009.

Q. Can an assistance eligible individual reduce his or her COBRA premium to 35% immediately, rather than waiting for the notice from the health plan?

A. Yes. The subsidy applies as of an assistance eligible individual's first period of coverage beginning on or after February 17, 2009. For example, it would apply to the premium for the period of coverage beginning March 1, 2009, in the case of coverage provided on a calendar month basis. However, because the COBRA subsidy provision was only recently enacted, systems to implement the premium reduction might not yet be in place. The assistance eligible individual would therefore be well advised to contact the group health plan or employer to discuss the premium reduction before sending in the reduced premium.

Q. Can an employer just reduce an assistance eligible individual's premiums to 35%, rather than notifying the individual about the subsidy?

A. No, because an individual might not be eligible for the subsidy. For example, the individual might be eligible for coverage under another group health plan and therefore not be eligible for the subsidy.

Q. Can an employer pay an assistance eligible individual's 35% share of the premium, rather than collecting it from the individual?

A. No. The premium subsidy provision does not allow the individual's 35% share of the premium to be paid by the employer.

Q. If I am an assistance eligible individual, is there any other way to get the subsidy besides paying reduced premiums? For example, can I take it as a credit when I file my 2009 tax return?

A. No, the subsidy is provided to an assistance eligible individual only in the form of reduced COBRA premiums. That is, the assistance eligible individual only has to pay



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35% of the premium in order to receive the COBRA coverage. The employer is reimbursed for the remaining 65% through a credit on its payroll tax returns.

Q. Is an employer initiated layoff an involuntary termination of employment for purposes of eligibility for the COBRA premium subsidy?

A. Yes, an employer initiated layoff is generally an involuntary termination of employment for purposes of eligibility for the COBRA premium subsidy.

Q. Are tax-exempt entities subject to this provision?

A. Yes, if the tax-exempt entity is required to provide COBRA continuation coverage. Moreover, an employer that is exempt from federal income tax is generally subject to federal payroll tax requirements and required to file Form 941. As in the case of taxable employers, a tax-exempt entity can claim credit on Form 941 for the COBRA subsidy it provides.

Q. How will the COBRA credit apply in the case of a business acquisition that results in a successor employer?

A. There is no "one size fits all" answer because the result depends on the facts and circumstances, including whether the entity that provided the subsidy continues in existence. The fact that an employer is a successor employer for purposes of applying the social security wage base does not mean that it can claim credit for the subsidy provided by the predecessor employer.

Form preparation

Q. Does a COBRA premium assistance credit reduce an employer's payroll tax liabilities when determining whether \$100,000 in liabilities has accumulated for deposit purposes?

A. The credit is treated like a payment of payroll taxes and is applied as a deposit made on the first day of the quarter. It does not reduce an employer's tax liabilities for purposes of determining the employer's deposit schedule generally or applying the \$100,000 deposit rule specifically. However, since the credit is applied as a deposit, a required deposit can be reduced by the amount of the credit. For example, if an employer accumulates \$110,000 of liabilities and has a \$20,000 subsidy credit, the employer must still deposit the next day under the \$100,000 rule, but is only required to deposit \$90,000.

Q. If an employer has unpaid employment taxes or unpaid income taxes, will that affect the amount of the COBRA premium credit that the employer can claim on Line 12a of Form 941?

A. If an employer with unpaid employment or income taxes claims a credit on Line 12a of Form 941 for the amount of COBRA premium assistance provided during the quarter, and the amount of the credit exceeds the amount of payroll tax liabilities shown on Form 941, the IRS will offset the other unpaid taxes against the balance due before refunding any balance. In this case, the IRS will notify the employer of the offset.



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Reporting and documentation

Q. If an employer reduces its payroll tax deposits during the quarter by the amount of its credit for the subsidy provided during the quarter, does the employer have to report the specific amount of the credit that is applied against each deposit?

A. No. The credit is claimed on the quarterly Form 941, regardless of whether the employer reduces its deposits during the quarter by the amount of the credit. It is not necessary for the employer to report the specific amount of the credit that is applied against each deposit. For example, an employer that applies the credit toward its required semi-weekly deposits would still report the total credit at the end of the quarter on Form 941 for the quarter.

Q. Regarding federal unemployment tax (FUTA), will an employer's percentage contribution or the balance of money in that fund change as a result of the COBRA premium subsidy?

A. No, the new subsidy provision has no impact on FUTA.

Taxability and recapture

Q. Is the 65% subsidy subject to state income tax?

A. The premium subsidy is not included in income for federal tax purposes. However, its treatment for state income tax purposes is determined under state law and depends on the tax law of the particular state.