

COBRA PREMIUM
RECOVERY ASSISTANCE ACT
February 17, 2009

On February 13, 2009, Congress passed The American Recovery and Reinvestment Act of 2009 (the "Act"), which was signed into law by President Obama on February 17, 2008. The Act includes provisions that make significant changes to COBRA continuation premium payment requirements. These provisions will be effective for most plans beginning March 1, 2009.

The Act provides a federal government subsidy of COBRA continuation premiums for certain individuals who are COBRA qualified beneficiaries because of a covered employee's involuntary termination of employment. The federal government will subsidize 65% of the COBRA premium actually charged to an "assistance eligible individual" (AEI) for up to 9 months. The subsidy applies to coverage under both the federal COBRA law and any state "mini-COBRA" laws (i.e., state continuation laws applicable to employers with fewer than 20 employees).

Under the Act's provisions, a group health plan may only require an AEI to pay 35% of the COBRA premium that the AEI would otherwise be required to pay. The federal government will reimburse an employer for the remaining 65% of the COBRA premium by allowing the employer to take a credit against the employer's liability to deposit payroll taxes and federal income taxes withheld from employees' compensation. The credit is applied as though the employer or insurer had submitted an equivalent amount of payroll tax on the date the qualified beneficiary's payment is received. It is important to note that an employer may not report a payment until it has made on behalf of an "assistance eligible individual" until the "assistance eligible individual" has paid his or her corresponding portion of the COBRA premium payment.

The Act, while very beneficial for COBRA eligible individuals, creates an additional administrative burden and complexity for plan sponsors when complying with COBRA requirements. The time period between the Act's enactment date and the date employers are required to comply is very short. Please contact our office for more information.

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