

# W Y C H E

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## **Subsidy for COBRA and Other Health Coverage Continuation**

You may be obligated to subsidize COBRA and other health continuation coverage premiums for certain terminated employees – including employees terminated as long ago as September 2008. The recently passed economic stimulus law, the American Recovery and Reinvestment Act of 2009 (the “Act”), provides a premium subsidy for certain individuals eligible for continuation of health care coverage. **Employers need to take action immediately because the subsidy is effective March 1, 2009 and certain compliance measures are required no later than the beginning of April, 2009.**

- **Eligibility.** An individual is eligible for the subsidy only if they become eligible for continuation coverage due to **involuntary termination** of an employee’s employment (other than for gross misconduct) on or after September 1, 2008 and on or prior to December 31, 2009. To be eligible, the individual must either have elected health continuation coverage in the normal course, or within the special election period discussed below.
- **Duration of subsidy.** The subsidy is available for nine months but may terminate earlier for a number of reasons including expiration of the continuation coverage period or the individual becoming eligible for Medicare or another group health plan (other than an FSA or certain limited coverage plans).
- **Effective date.**
  - The subsidy is effective for coverage periods beginning after the date the Act became law. For plans paying monthly premiums, the subsidy is thus generally effective for coverage beginning on **March 1, 2009**. While the subsidy is not retroactive (i.e., it is not available for past months), it is available to eligible persons who were terminated prior to March 1.
  - Employers generally have until **April 1, 2009** to implement the subsidy, but they must provide reimbursement or a premium credit to eligible individuals who paid the full premium for coverage between March 1 and April 1.
- **Special election period.**
  - If an individual would be eligible for the subsidy except that they did not elect or dropped continuation coverage, the individual is entitled to elect continuation coverage up to 60 days after they receive notice of this special election right.
  - Notice of this special election right must be provided in writing no later than **April 18, 2009**.
  - The continuation coverage period is still measured from the original qualifying event, not the date when the special election is made.

- **Subsidy amount; phase out for high-income individuals.**
  - An eligible individual is required to pay only 35% of the premium for continuation coverage. Further guidance is needed on how the subsidy applies if an employer pays a portion of the continuation coverage premium.
  - The subsidy is reduced for individuals with incomes over \$125,000 (\$250,000 for joint returns) down to zero for incomes over \$145,000 (\$290,000 for joint returns).
- **Notice.** Individuals who become eligible for the subsidy must be provided written notice regarding the availability of the subsidy.
- **Model notices.** The Department of Labor is to provide model notice forms by March 19, 2009.
- **Subsidy reimbursement.**
  - The subsidy is reimbursed by treating the amount of the subsidy as a payment of payroll taxes.
  - If this payment exceeds the liability for payroll taxes, the IRS will provide a refund or credit for the excess.
  - Reimbursement is available only if the eligible individual actually pays their portion of the premium.
- **Election to permit transfer to another health plan option with equal or lower premiums.**
  - An employer **may** elect to permit a subsidy-eligible individual to change to a different type of health care coverage. Normally, an individual may only continue the exact coverage in place at the time they became entitled to continuation coverage.
  - The premium for the different coverage cannot exceed the premium for the original coverage and certain other conditions must be met.
- **Not limited to COBRA coverage.** The subsidy applies to COBRA continuation coverage, comparable continuation coverage under state law and required continuation coverage for federal and state government health plans.

*This memorandum is provided by The Wyche Law Firm for educational and informational purposes only and is not intended and should not be construed as legal advice. The law regarding health care continuation coverage and related regulations are the subject of ongoing interpretations and clarifications. We will be pleased to discuss with you in detail how any of the general information discussed in this memorandum may apply to your particular company or circumstances. Please contact the following for more information.*

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