

Prepared for the Northern California HR Association by Diana Maier of the NCHRA Legislative Affairs Committee. This document provides an overview and is not intended to be used for legal advice.

WHAT HR PROFESSIONALS NEED TO KNOW ABOUT THE NEW COBRA PROVISIONS

On February 17, 2009, President Obama approved the American Recovery and Reinvestment Act (ARRA), a.k.a. the Stimulus Bill, which results in modifications to the Consolidated Omnibus Budget and Reconciliation Act (COBRA). The ARRA requires the employer to provide three things: 1) subsidized COBRA premiums for qualifying individuals 2) an extended COBRA election period and 3) the option to elect a COBRA plan other than the one offered at the time of the qualifying event.

The subsidy is available for up to nine months for each qualifying individual, but eligibility terminates sooner if another event negating eligibility occurs. The employer pays 65% of the COBRA premium and the employee pays 35%. The employer then seeks reimbursement from the federal government in the form of a credit against their quarterly federal employment tax filings.

What Does the HR professional need to do?

- 1) Take a look at any employees who left or will leave the workforce between September 1, 2008 and December 31, 2009. If such individuals involuntarily leave the workplace because of layoff or termination (and a host of other reasons other than gross misconduct) they may be eligible for the COBRA subsidy.
- 2) Ascertain whether these individuals are COBRA eligible. If they are not, no COBRA subsidy applies.
- 3) Notify employees that they may *not* be subsidy-eligible if they have a modified adjusted gross income over 145K if filing singly or over 290K if married and filing jointly.
- 4) Amend your notice practices. Notices must now include:
 - a. Forms establishing eligibility for the premium subsidy;
 - b. Contact information for the plan administrator;
 - c. A description of the extended election opportunity;
 - d. A description of an assistance eligible individuals' obligation to notify the plan when he or she becomes eligible for coverage that would cause eligibility for the subsidy to cease (e.g. coverage newly available through a spouse's plan) and the penalty (110% of the subsidy) for the failure to do so;
 - e. A description of the qualified beneficiary's right to the COBRA subsidy and any conditions on such right;
 - f. And a description of the ways that he/she may enroll in different coverage under the health plan if applicable.

- g. Notify former employees who declined COBRA coverage during the qualifying period that they are entitled to an extended election period that begins on March 1, 2008 and ends no sooner than 60 days after the extended election notice is provided to the individual.
- 5) Pay 65% of the COBRA premium for any subsidy eligible employee for a period of up to nine months
 - 6) Offset federal payroll tax liability by the total amount of subsidy paid out during the federal payroll tax reporting period that coincides with the date the employee received the subsidy.
 - 7) Allow employees to change plan election provided they do so within 90 days of receiving notice from the employer.
 - 8) You may also want to consider contacting COBRA administrators and benefit advisors or brokers to assist in developing the required notices and a compliance plan.

For a more detailed analysis of these requirements or to ask questions contact Diana Maier, employment counsel, at Diana@dianamaierlaw.com or 415-632-5118.