

Employee Benefits Broadcast



Foley is pleased to provide you with a brief summary of the March 24, 2009 installment of the Employee Benefits Broadcast Web conference series.

In **Headline News**, Foley Partners **Leigh C. Riley** and **Samuel F. Hoffman** discussed the new Consolidated Omnibus Budget Reconciliation Act (COBRA) subsidized premium rules. The key points are as follows:

An assistance-eligible individual (AEI) is eligible for a 65-percent subsidy of his/her COBRA premium for up to nine months. For most plans, the new rules are effective March 1, 2009. Covered plans include self-insured or insured medical, dental, vision, health reimbursement arrangements (HRAs), employee assistance plans (EAPs), and plans covering fewer than 20 employees, if subject to state COBRA-like laws. Church plans exempt from Employee Retirement Income Security Act (ERISA) are not covered, unless they are subject to state COBRA-like laws.

The subsidy equals 65 percent of the COBRA premium. For example, if the cost of continued coverage is \$500, but the COBRA premium is \$100, the subsidy is \$65 and the AEI pays \$35.

» **Action item: Calculate AEI premium amount**

An AEI is an employee who is involuntarily terminated between September 1, 2008 through December 31, 2009. AEIs also include the employee's spouse and other dependents, but usually not domestic partners. If the employer determines an employee is not eligible for the subsidy, an employee can appeal to the government (U.S. Department of Labor (DOL) for private employers or the U.S. Department of Health & Human Services for government employers), and the government will rule within 15 days.

» **Action items:**

- **Determine AEIs**
- **Establish how to respond quickly to the government's information requests**

The subsidy ends on the earliest of (1) nine months after first month for which the subsidy is provided, (2) the date an AEI is eligible (does not require enrollment) for another group health plan or Medicare, (3) the expiration of the maximum coverage period, or (4) the expiration of the coverage period that would have applied if COBRA had been initially elected.

» **Action item: Determine when the subsidy ends for each AEI**

AEIs must provide written notice to the plan upon eligibility (not upon enrollment) for a new group health plan or Medicare. Dental, vision, counseling, flexible spending accounts (FSAs), or on-site medical plans do not end the subsidy. The employer is not responsible for monitoring AEI eligibility for other coverage.

The subsidy is treated as payment of payroll tax on Form 941 after the AEI pays the reduced premium.

» **Action item: Work with the payroll and COBRA vendors to develop a process to claim reimbursement**

Employers must maintain records to document the subsidy amounts: (1) the amount paid and date received from the AEI, (2) an insurer invoice and proof of timely payment, (3) documentation of involuntary termination, (4) proof of the AEI's eligibility, (5) Social Security numbers and the subsidy amount for each of covered individual, and (6) any document necessary to verify the correct reimbursement amount.

» **Action item: Identify the person responsible for collecting and maintaining supporting documentation**

If, on February 17, 2009, the AEI does not have COBRA coverage because the AEI did not elect COBRA or quit paying premiums, the AEI has a second chance to elect COBRA. Notices to AEIs regarding the second election period must be distributed by April 19, 2009. The second election period ends 60 days

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after notice is distributed. Coverage begins on March 1, 2009, but does not extend beyond the original COBRA period.

Employers have the option to offer AEIs a lower-cost plan that is offered to active employees. Plan administrators have 60 days to give notice and the AEI has 90 days to elect it.

» **Action item: Decide whether or not to offer a lower-cost plan and, if yes, provide notice**

DOL has provided four model notices: (1) General Subsidy Info Notice for any qualified beneficiary (QB) currently covered by COBRA, (2) Special Subsidy about Second Election Notice for AEIs who had a qualifying event (QE) between September 1, 2008 and February 16, 2009, but did not elect COBRA or later quit paying premiums, (3) Combined General COBRA and Subsidy Notice for all QBs with QEs between September 1, 2008 and December 31, 2009 who received (or will receive) a general COBRA notice on or after February 17, 2009, and (4) Special Subsidy Notice for Insurers for insurance companies that provide state-mandated COBRA-like coverage.

» **Action items:**

- Identify who will send notices
- Identify who will receive which notice
- Customize model notices

Potential penalties for failure to provide notices are \$110 per day under ERISA and \$110 per day under the Code. Also, AEIs can sue under ERISA and the Public Health Service Act.

Additional information is available at the following government Web sites:

<http://www.dol.gov/ebsa/COBRA.html>

www.irs.gov

www.cms.hhs.gov/COBRAContinuationofCov/

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About the Employee Benefits Broadcast

The Employee Benefits Broadcast provides participants with needed information in the most efficient manner possible — only a telephone line and Internet access are required to participate — allowing employee benefits professionals to stay up-to-date with timely information from anywhere in the nation.

For more information, please visit Foley.com/EBB or contact Elie Harris at eharris@foley.com.

