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American Recovery and Reinvestment Act of 2009: Economic Stimulus Package Includes COBRA Subsidy

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009. Included in the legislation is the creation of a 65 percent subsidy payment to your former employees that will require you to change the way you administer your COBRA and Cal-COBRA benefits.

EFFECTIVE DATE:

The effective date of this legislation with respect to the subsidy is March 1, 2009. It may take as long as 60 days for current eligible COBRA Participants to receive the subsidy. The amount will be reimbursed through repayment or credit against the future 35 percent participant cost.

WHO QUALIFIES:

The subsidy affects COBRA Participants and Qualified Beneficiaries who:

- Qualify because of an *involuntary termination* (other than gross misconduct or voluntary termination),
- is eligible on or after September 1, 2008 and on or before December 31, 2009,
- earns less than \$145,000 annually and
- elects coverage during their original election period or during the special period provided by this legislation.

SPECIAL ENROLLMENT PERIOD:

Those individuals with Qualifying Events occurring prior to the enactment of this law and after September 1, 2008, will be offered another opportunity to elect COBRA. This period ends 60 days after the plan administrator provides notice to the individual. If COBRA is elected, their start date will be no earlier than March 1, 2009. Coverage is NOT retroactive. Their benefit period will be measured from the original Qualifying Event Date or Loss of Coverage Date. If the individual elects coverage under this provision, any pre-existing condition limitations will be waived.

AMOUNT OF SUBSIDY:

The Federal Government is providing a subsidy of 65 percent, requiring the participant to pay 35 percent of the total COBRA Premium. The premium used for calculation of the subsidy includes administrative fees imposed by the employer, third party administrator or insurance carrier.

SUBSIDY PAYMENT:

The previous employer of the qualified beneficiary initially pays the 65 percent COBRA Subsidy. The employer or their COBRA Administrator will collect the 35 percent premium from the participant and then pay the insurance carrier the full premium amount. Timely payment to insurance carriers is critical to alleviate any possible payroll tax penalties. The employer can offset any subsidies they pay against their payroll tax liability. If there are not sufficient payroll taxes to offset the subsidy, the employer can request a refund from the IRS.

DURATION OF SUBSIDY:

Subsidy payments begin March 1, 2009. The maximum subsidy period ends:

- After nine (9) months or,
- the individual becoming eligible for Medicare or,
- the individual becoming eligible for another group insured medical plan even if they do not enroll in the new coverage.

EMPLOYER COMPLIANCE & NOTIFICATION:

Administrators must provide the subsidy to all qualified beneficiaries beginning March 1, 2009. Due to the short notice, it is likely that many employees will continue to pay the full premium amount until they are notified. If the individual pays the full COBRA premium the plan administrator must credit the subsidized portion of the premium against future COBRA premiums or issue a refund within 60 days.

Notice must be provided within 60 days to:

- All employees who currently have COBRA coverage. This group needs to be made aware that the subsidy is now available and the amount they should remit to the administrator.
- Individuals who are entitled to the special enrollment period (September 1, 2008 – March 1, 2009).

PARTICIPANT TAX IMPLICATION:

Single individuals can receive an unrestricted subsidy with an adjusted gross income below \$125,000. Individuals with incomes between \$125,000 and \$145,000 are eligible for a proportional subsidy, and no subsidy is available to those with an AGI exceeding \$145,000*. For couples, the threshold begins at \$250,000; proportional between \$250,000 and \$290,000; and no subsidy beyond \$290,000.

*Individuals earning \$145,000 or above will be permitted the opportunity to waive the subsidy permanently once the method has been developed by the Secretary of the Treasury.

COBRA PARTICIPANT PENALTY:

If the COBRA participant is no longer eligible for the subsidy because they became eligible for another group medical plan or Medicare and they fail to report it to their former employer, they will be subject to a penalty of 110 percent of the subsidy when they file their tax return.

SUBSIDY DENIAL REVIEW:

If a Qualified Beneficiary or COBRA Participant is denied the subsidy, the Department of Labor will provide an expedited review of such denials within 15 days.

STATE CONTINUATION BENEFITS (CAL-COBRA):

California employers with fewer than 20 employees are subject to Cal-COBRA which requires the insurance carriers to collect the full premium amount from the former employee directly. At this time, the carriers are currently in consultation with their legal teams to determine how they will comply with this new legislation.

REPORTING:

The Department of Labor and IRS are developing methods and forms to report activity under this subsidy. These report formats are expected within 60 days following enactment of this law.

Sweet & Baker will continue to keep you informed of the changes regarding this new law. If you have questions and need help with compliance questions, please call your Sweet & Baker employee benefits team.