

# COBRA Premium Subsidy Law Summary

*This summary is for informational purposes only and is not intended to replace the advice of your Employee Benefit, Payroll or Tax Advisors.*

An “assistance-eligible individual” is entitled to receive a 65 percent subsidy for continuation coverage premiums for up to nine months.

An assistance-eligible individual is any qualified beneficiary who elects COBRA coverage and: (1) has a loss of group health coverage as a result of a covered employee’s involuntary termination of employment (other than for gross misconduct) between Sept. 1, 2008 and Dec. 31, 2009; and (2) is otherwise eligible for COBRA coverage.

An individual whose modified adjusted gross income exceeds \$145,000 (or \$290,000 for joint filers) cannot retain the benefit of the COBRA subsidy, and the benefit is reduced proportionately for those with modified adjusted gross incomes between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers).

An assistance-eligible individual can be any qualified beneficiary, including the covered employee, spouse and dependent child. Each individual can independently receive a subsidy. The subsidy does not apply to domestic partner coverage continued under a qualified beneficiary’s COBRA coverage.

Continuation coverage includes federal COBRA, state law that provides continuation coverage comparable (that is, “substantially similar”) to COBRA and continuation coverage that applies to health plans maintained by federal and state governments.

Eligibility for the subsidy can terminate early if: (1) the assistance-eligible individual ceases to be entitled to COBRA coverage; or (2) the individual becomes eligible for Medicare or other group health coverage.

If the assistance-eligible individual becomes eligible for other group health coverage, the subsidy eligibility will terminate. Subsidy eligibility can terminate even if: (1) the other plan has an exclusion or limitation affecting a pre-existing condition of the individual; and (2) the individual does not elect such coverage. However the provision does not allow the replacement of group medical coverage if the other group health coverage is: dental- or vision-only coverage, counseling and/or referral services, health flexible spending accounts or coverage for an employer’s on-site medical facility that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination of such care).

A special 60-day election period exists for a qualified beneficiary who is eligible for a reduced premium and who does not have COBRA coverage in effect as of Feb. 17, 2009 (the enactment date).

An employer may elect to make a special enrollment period available for assistance-eligible individuals to take a lower level of group health plan coverage, other than dental- or vision-only coverage, counseling and/or referral services, health flexible spending account, or coverage for an employer’s on-site medical facility that consists primarily of first-aid services, prevention and wellness care or similar care (or a combination of such care).

The person to whom premiums are payable shall be reimbursed by the amount of the COBRA reduction. An entity is not eligible for subsidy reimbursement, however, until it has received the reduced premium payment from the individual.

COBRA election notice must be modified to include information on the premium subsidy program.

A new notice must be given to qualified beneficiaries entitled to a special election period after enactment.

The new rules can be enforced through lawsuits under ERISA, and plan administrators are subject to penalties for late notices.

Certain government agencies are given the authority to issue implementing regulations and other guidance.

## **How do I work with Kansas City Life on COBRA in light of the COBRA Premium Subsidy Law?**

The COBRA process will continue to work the same as it has in the past for Kansas City Life Policyholders.

## **Who are “assistance-eligible individuals”?**

Assistance-eligible individuals include any qualified beneficiary who elects COBRA coverage and satisfies two additional requirements:

1. The qualifying event must be a loss of group health plan coverage on account of an involuntary termination of the covered employee’s employment.
2. The qualifying event triggering COBRA rights must occur during the period beginning September 1, 2008 and ending December 31, 2009, and the individual must be eligible for and elect COBRA coverage. An otherwise eligible individual does not have to elect COBRA coverage by December 31, 2009; it is just that the qualifying event must occur by that date.

## **What is “Involuntary Termination”?**

The employer will need to make the determination of who is qualified for this subsidy. A termination for gross misconduct does not qualify, neither does a voluntary resignation. You should make sure that the voluntary resignation was not a “force out” and was truly voluntary to avoid any disputes. The law anticipates that there could be disagreements about a qualified beneficiary’s status as an “assistance-eligible individual” and has a dispute resolution provision, but a formal process has not yet been established.

### **The Income Threshold:**

The law limits the availability of the subsidy for individuals making over \$125,000 (\$250,000 filing jointly). The former employer will have to make you aware if they exceed the income threshold.

### **What notices need to be provided?**

There are several notices that you currently use for COBRA. These will need to be modified for future use and for sending to assistance-eligible individuals. The Department of Labor is supposed to make a model notices available on or around March 19, 2009.

Employers will need to provide the new notice to assistance-eligible individuals by April 18, 2009.

#### **Types of Notices:**

- Qualifying Event Notices in General
- Notices to Individuals who Failed to Elect COBRA Coverage before enactment
- Notices to Individuals who Elected COBRA Coverage before enactment
- Notice of New Special Enrollment Right

#### **Types of Notices the Employer may receive from Qualified Beneficiaries**

- Notice of Ineligibility for Premium Subsidy
- Notice to DOL Challenging Entitlement to Subsidy
- Waiver of Entitlement to COBRA Premium Subsidy

### **Who provides the new notices?**

Employers are responsible for providing all notices to those individuals who may be assistance-eligible.\* Employers will need to notify Kansas City Life when an assistance-eligible individual elects COBRA. Employers will need to notify Kansas City Life when an individual terminates from COBRA.

\*The one exception is California employers subject to Cal-Cobra. Kansas City Life will provide notices to former plan members. These employers will need to notify Kansas City Life which employees were involuntarily terminated and not terminated for gross misconduct or voluntarily resigned. (See guidelines above for Involuntary Termination)

### **How the employment tax credit works:**

Step 1 – The entity to whom premiums are payable is to be reimbursed by the amount of the premium for COBRA coverage that is not paid by an assistance-eligible individual. The qualified beneficiary pays 35 percent of the applicable premium. The entity to which the premium is paid can get reimbursed for the other 65 percent.

Step 2 – This reimbursement is taken as a credit against that entity's liability for payroll tax deposits (including wage withholding and FICA taxes). If the credit would exceed the amount of the payroll tax deposits, then the entity would get a direct refund. The entity is not eligible for the subsidy reimbursement until that entity has actually received the reduced premium payment from the assistance-eligible individual. Employers will generally report these amounts on their quarterly Forms 941. The IRS has updated these forms for this purpose. The regulators are still working on the mechanism providing for a direct refund if the credit exceeds payroll and FICA taxes due.

### **To whom are premiums paid?**

The assistance-eligible individual will pay their 35 percent of total premium to their former employer. The employer will pay Kansas City Life 100 percent of the premium due for dental or vision coverage. The employer will file for reimbursement of the remaining 65% through IRS Form 941 when reporting their withholding and FICA taxes.

### **Coordination with HIPAA Break in Coverage Rules:**

Under HIPAA, a group health plan can only impose a pre-existing condition exclusion for a period of up to 12 months (18 months for late enrollment) minus a person's period of prior credible coverage. If a person has a break in coverage of 63 or more days, that prior coverage can be disregarded and the individual is subject to a full pre-existing condition exclusion period. Because the new law provides that the period between the assistance-eligible individual's qualifying event and the enactment date is not a break in coverage, such an individual could elect COBRA coverage and avoid the impact of what would otherwise be a gap of coverage of more than 63 days.