

Q&A from Lambert & Carney Benefits Group Cobra Changes ARRA Webinar

Q. 1. Our health care and cobra plan is with Aetna. A terminated employee's cobra coverage is paid by the former employee directly to Aetna. Would our insurance carrier be billing us for the subsidy and then we would be responsible for recovering the 65% or would the carrier be responsible for recovering the subsidy?

A. The law allows the subsidy to be claimed by a plan administrator, Multiemployer group, or insurance company. We have requests in to several carriers trying to determine how they will be administering the subsidy when they are both the COBRA administrator and the insurance company. So far two carrier representatives have replied that while they are looking into it, they anticipate that it will be the employer's responsibility to provide the 65%. We will update the entire list when we get a final and definitive answer back from them.

Q. 2. On COBRA, if the person on COBRA is not the employee but either the ex-spouse of the employee or a child that turned of age, will they be eligible for this?

A. If the dependent is COBRA eligible exclusively due to a divorce or reaching the age limit they are not entitled to the subsidy. However if they are on COBRA due to the involuntary termination of the employee that occurred on or after October 1, 2008, and subsequently had a second qualifying event, then they would be eligible for the subsidy.

Q.3. Wouldn't COBRA Help handle the notification process?

A. COBRA Help is a service available to many Lambert & Carney employees at no cost. If you are a mutual client, they will be handling the notification process and we will be picking up the fee for this as part of our agreement with them. You will need to indicate who was terminated on an involuntary basis since September 1, 2008.

Q.4. If an employee exhausts FMLA and cannot return and is termed, is that involuntary or voluntary?

A. If the organization didn't terminate them it would be voluntary.

Q. 5. This legislation applies even to small businesses of less than 50 employees? Less than 25 employees?

A. COBRA applies to all groups that have 20 or more employees with the exception of governmental agencies and religious groups. ARRA extends its reach by making employers that are subject to state continuation benefit regulations also subject to its provisions. Therefore in most states even groups with fewer than 20 people will need to comply.

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Q. 6. Do we need to send new COBRA initial notices to all current active employees? Will DOL provide that notice?

A. You do not need to send new COBRA notice to currently active employees. However you will need to modify your notices for future initial notices.

Q.7. If EE was termed 9/1/08 and never rec'd COBRA package and had no option but to choose spousal plan, would they be eligible for subsidy?

A. If the terminated employee never received a COBRA notice the employer is in violation of the law and could be subject to severe penalties. This is a good example of the benefit of outsourcing this responsibility to a specialist, similar to what we are offering for our Lambert & Carney clients.

The second part of that answer though is that by being eligible for the spouses plan (due to the spouse's loss of coverage being a qualifying event) it would eliminate the eligibility for the subsidy.

Q. 8. People on COBRA with 2 person or family coverage will pay less than active employees? Is this a problem under the law? I know its very bad PR!

A. Yes strange indeed. But it is now law.

Q. 9. If an employee voluntary reduced their control hours to a non-benefit eligible status and refused COBRA. Would they be eligible to enroll at this time and receive the subsidy?

A. A reduction in hours does not qualify for the subsidy even though it is a qualifying event under COBRA unless the employee is eligible for certain Trade Adjustment Assistance; or the covered employee had a non-forfeitable right to a benefit under a defined benefit plan which will be paid by the Pension Benefit Guaranty Corporation (PBGC) forfeitable right to a benefit.

Q. 10. If the insurance carrier is the one handling COBRA, does the employer need to do anything?

A. That will likely depend on the carrier and the type of arrangement you have with them. Please see question 1.

Q. 11. We do not contribute 65% now, but with this new law we will have to? We only contribute \$100 for employed employees, this doesn't seem fair to our current employees.

A. Under ARRA the employer is only acting as a conduit for the subsidy. The company still won't be contributing 65% to the AEI, though the government will.

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Q.12. As part of the employee's termination, she was provided with benefit continuation paid by the employer through 2008. Does she still qualify for this discounted COBRA coverage?

A. The subsidy only takes into account COBRA premiums that are due after February 17, 2009. For most plans that means March 1, 2009. Therefore severance arrangements that pay premiums during 2008 won't matter. What will matter is that her date of termination needs to be on or after September 1, 2008.

Q.13. How does employer gain income information for plan?

A. An employer will not be able to know what an individual's or couple's Adjust Gross Income is for tax purposes. It will be up to the AEI to either waive out of the subsidy or adjust their income on the personal returns.

Q. 14. Would EE get any credit for premiums deducted from paychecks on spousal plans since 9/1/08?

A. If the AEI is eligible for coverage under a spouse's plan, they are not eligible for the subsidy.

Q. 15. For those same-sex couples - will the subsidy amount be only based on the employee premium even if the employee elects family coverage to cover the same-sex spouse?

A. Yes, the subsidy would only be based on the premium that would be charged to employees and federally recognized dependents.

Q. 16. Do we have to offer existing ees an option to buy down during this special enrollment?

A. No. An employer can decide whether to offer multiple coverage or not to the AEIs. It does not have to offer an off cycle open enrollment to active employees.

Q. 17. We are self insured - is there a difference in how this is administered

A. No, you would still be responsible to send the same notices and recapture the subsidy through payroll taxes.

Q. 18. We have an employee who voluntarily terminated employment because of a disability in December. She has elected Cobra and the State of Massachusetts is currently paying her premium. The disability may be permanent. Would she be eligible?

A. No, this would be for involuntary terminations only.

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Q. 19. Should the employer notify the employees at the time they are eligible for COBRA even if the employer is paying their benefits for several months, or should the notification go out when the cost becomes the employee's responsibility?

A. We feel that it is prudent to notify COBRA Qualified Beneficiaries at the time of termination of their rights.

Q. 20. Would sleeping on the job be considered gross misconduct (had previously been disciplined about it)

A. We do not want to comment on what is gross misconduct through the Q&A. There are a number of facts and circumstances that need to be taken into account that we are unable to in this setting.

Q. 21. Should an AEI call her previous ER to get new COBRA forms?

A. It will be the employer's responsibility to get the forms out. It is not the employee's responsibility. However, I would anticipate that many AEIs will be initiating calls not wanting to pay 100% of March's premiums.

Q. 22. When do employers have to provide updated initial notifications to their active employees?

A. There isn't a requirement at this time to reissue initial notices to existing active employees. The notice requirement is for all those employees terminated since September 1, 2008.

Q. 23. If a company has Union provided coverage paid by the employer who has the responsibility to provide the subsidy?

If the Union is the plan administrator and is the entity that normally handles COBRA, they would be responsible for notifying the terminated employees. They would also be the entity that files for the subsidy.

24. Must employers notify those who terminated since 9/1/08 but who did not elect COBRA of the changes?

YES, the eligibility for the subsidy is retroactive to 9/1/08 and applies to all involuntarily terminated employees whether or not they elected Cobra upon their termination.

25. The employer can only receive the subsidy after the employee has paid their portion of the Cobra premium?

Yes, employers will only be able to get the subsidy after the employee has paid their portion of the premium.

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26. Must employers notify everyone on COBRA prior to 9/1/08 of the changes?

NO, the special election is only available to employees that have been involuntarily terminated retro to 9/1/08. Everyone terminated after 9/1/2009 should receive the notice even if the termination was voluntary. Employees terminated prior to 9/1/08 are not eligible for the subsidy and do not need to be notified of the special enrollment.

27. If termed individual went onto a spouse plan can they still be eligible?

NO, spousal coverage would make them ineligible for the subsidy.

28. Does his mean that the employer will be responsible for 65% of an employee's cobra premium?

YES, (If not covered by a multiemployer plan) but only to the degree that you need to remit that payment to the insurance carriers that you are doing business with. Employers do not have added financial responsibility as they will be able to recoup their expenses by way of reduced payroll taxes.

29. As of now, the last month of the effective termination date of the subsidy would be 09/01/10, correct?

YES, the last date of ELIGIBILITY for the subsidy would 12/31/09 so that would run subsidy payments through 9/1/10

30. Can you comment on this? The employer will then get a credit against its payroll taxes for the balance of the COBRA premium for a self insured group health plan. (The insurer gets the credit in the case of an insured group health plan.)

The credit for an insured group would go to the Employer who has paid the premium on behalf of the involuntarily terminated employee. Self funded groups would retain the subsidy as partial payment of the overall cost of the plan available to the AEI.

31. Does an employee's inability to return from a medical leave of absence constitute a voluntary or involuntary termination?

Inability to return from a medical leave would be considered a voluntary termination as the law reads today.

32. What happens if on 9/1/08 you have a different plan and effective 3/1/09 you have a new type of plan, will the employee that was termed on 10/1/08 be able to sign up to COBRA on 3/1/09 on the new insurance even though they did not elect COBRA originally?

YES, if they meet the eligibility requirement and they were involuntarily terminated.

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33. How does this address employees that had never elected the Employer's medical plan prior to terminating?

Employees that were not on the medical plan prior to being terminated are not eligible for Cobra so the subsidy would not be available to them.

34. If we offer the option to switch to a lower cost plan - did you say that we would need to offer this special enrollment to active employees as well?

No, all open enrollment rules and guidelines for current employees would still remain in place. The comment was that the lower cost plan has to be a plan that is also offered to active employees.

35. What do you consider a resignation in lieu of termination to be involuntary?

A resignation would be defined as someone voluntarily leaving the organization vs. involuntary termination where no choice is involved.

36. What do I do if I have both a fully funded HSA and PPO? Do I only offer the PPO to the employee?

No, you would offer the package that is available to all of your employees. Your terminated employee would have the option to participate on their current plan or a lower cost plan. They can not elect the more expensive plan in lieu of the subsidy.

37. We have an employee impacted with a same sex partner and child on a family plan. Are we right to assume they would be eligible under this provision?

The way the law reads only the employee and their child would be eligible for the Cobra Subsidy. The Cobra subsidy follows the Federal Government dependent laws. So, essentially anyone eligible dependent as defined by the Federal Government would be eligible for the subsidy.

38. Can you review when an associate who lost coverage due to a reduction in hours will be eligible for the subsidy?

They would be eligible for the subsidy on 3/1/09 the same as anyone who has been involuntarily terminated would be. The same look back period to 9/1/08 would apply as well.

39. We have an employee involuntarily terminated in July 2008 - will they be eligible?

NO, the look back is only retro to 9/1/08.

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40. When do we have to notify termed employees by? What is the employer "grace period" while waiting for the DOL to put out sample notices?

The regulation calls for notices to be sent out within 60 days of enactment.

41. Please re-explain the subsidy for those whose coverage ended on date of termination.

We are not sure exactly what you are referring to here however the subsidy at this point in time is a 9 month subsidy and anyone involuntarily terminated retro to 9/1/08 and through 2009 would be eligible for the subsidy if they meet the additional earnings and no other coverage criteria. Anyone taking advantage of the subsidy would have 9 months of subsidized premiums by the government starting from the date they are first subsidized. Someone starting on March 1st 2009 would have the subsidy for 9 months so they would be subsidized through the month of November.

42. How would this impact medical plans that have a deductible?

There is no impact to the underlying medical plan. The subsidy is solely based on the premiums of the Cobra plan.

43. If company pays first 3 months cobra at 100%, AEI would only get 6 mo of subsidy eligibility, correct?

You are correct and in lieu of this you may want to revisit your severance package to achieve maximum efficiency for the company and your Terminated employee.

44. If the employer is paying severance and part of that severance package is paying 100% of the former employee's COBRA, does the employer received that subsidy?

NO, the subsidy is only based off of what the terminated employee's financial responsibility is.

44. Have they mentioned how the credit would be submitted - will there be a new 941 form?

The subsidy will be recouped by employers by way of reduced payroll and FICA taxes. A new 941 is available.

45. The involuntarily terminated employee is COBRA eligible and Medicare eligible so cannot get the subsidy. His spouse is COBRA eligible but not Medicare eligible. Is the spouse eligible for the subsidy?

Yes, the spouse would be eligible for the subsidy. An AEI may be an ex-employee, their spouse or dependent children.