

The following article was originally published in the Winter Edition of the West Virginia Chamber of Commerce *HR Journal*. For information on the publication, go to: [www.wvchamber.com](http://www.wvchamber.com).

**Obligations Imposed on Employers by the COBRA Provisions  
of the Stimulus Bill Extended Under Recent Law**

Under federal law, employers with 20 or more employees must offer continuation of health coverage (Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”)) to former employees and their spouses and dependents (“qualified beneficiaries”) if they lose coverage. On February 17, 2009, the American Recovery and Reinvestment Act of 2009 (“the Act”) was enacted, which amended COBRA rules to create additional notice requirements and alter payroll tax administration in order to administer a significant federal subsidy of COBRA premiums. These changes affect every employer that sponsors a group health plan for employees and has terminated or laid off an employee from September 1, 2008 to the present.

Initially under the Act, for COBRA coverage periods beginning on or after February 17, 2009, “assistance eligible individuals” were required to pay only 35% of his or her applicable COBRA premium. Employers that provide coverage through insurance or self-insurance will be able to obtain reimbursement of the 65% premium subsidy they are required to provide as a credit against their quarterly federal employment tax filings. An “assistance eligible individual” (“AEI”) is one who: (1) was eligible for COBRA coverage; (2) lost coverage under his/her employer-sponsored health plan due to an involuntary termination of employment between September 1, 2008 and December 31, 2009; **and** (3) elects COBRA continuation coverage. The Act’s language does not

expand on what constitutes an involuntary termination, but does suggest that anything short of a discharge for a cause will not disqualify one for the subsidy.

While employers may have anticipated that the obligations imposed by the COBRA subsidy would end in early 2010, Congress recently passed and the President signed the Defense Appropriations Act which extends the eligibility period for the COBRA premium subsidy for an additional two months (through Feb. 28, 2010) and the maximum period for receiving the subsidy to an additional six months (from nine to 15 months). Individuals who had reached the end of the reduced premium period before the legislation extended it to 15 months will have additional time to pay the reduced premiums related to the extension. To continue their coverage AEIs must pay the 35% of premium costs within 60 days after date of enactment of the extension or, if later, 30 days after notice of the extension is provided by their plan administrator. This amendment also imposes additional notice and re-notice requirements for employers regarding these extensions.

The Department of Labor released a statement indicating that it will soon post updated notices for employers' usage and additional information regarding the extension at [www.dol.gov/cobra](http://www.dol.gov/cobra).

Generally, the subsidy is available for up to 9 months but can end sooner (for example, when the maximum continuation coverage period under COBRA expires). Additionally, the subsidy will cease to be available AEI becomes qualified for: (1) coverage under any other group health plan; (2) coverage under a flexible spending account plan; (3) coverage of treatment at certain employer on-site facilities; or (4) Medicare or Medicaid. Employees receiving the subsidy are required to notify employers of events that would cause the subsidy to cease.

If a qualifying individual has already paid the full COBRA premium the Act entitles such the AEI to reimbursement from the employer for the excess over which the individual is required to pay under the Act or a credit against future COBRA premium payments.

Employers must temporarily amend their current COBRA election notices to include information about the availability of the premium subsidy and the option to enroll in different coverage. The notices must include or provide:

1. The forms necessary for establishing eligibility for the subsidy;
2. Contact information of the plan administrator and any other person with information regarding the premium subsidy;
3. A description of the extended election opportunity for those who previously declined COBRA coverage;
4. A description of an AEI's obligation to notify the plan when he/she becomes eligible for coverage that would cause eligibility for the subsidy to cease;
5. A prominent description of the qualified beneficiary's right to the COBRA; and
6. A description of the option to enroll in different coverage under the health plan.

The Act requires employers to locate former employees who previously declined COBRA and provide notice of the right to COBRA coverage with the government subsidy. If an eligible individual elects COBRA continuation coverage during the special extended election period, COBRA coverage will commence with the first period of coverage beginning on or after the enactment of the Act. For purposes of determining the maximum COBRA coverage period, the date of the individual's involuntary termination of employment will continue to be treated as the "qualifying event."

Because the federal COBRA premium subsidy is reimbursed to employers through the federal quarterly payroll tax reporting system, the Act requires employers to advance the premium subsidies until the employer's payments can be recouped through reduced federal payroll tax payments. Employers will have to determine the total amount of the subsidy paid during any given federal payroll tax reporting period. The employer may use this amount as an offset to its federal payroll tax liability. To the extent that the offset exceeds the employer's liability for federal payroll taxes, the IRS will reimburse the employer for the excess.

In addition to expected modifications to current payroll tax reporting forms, the Act requires additional information be provided by employers seeking reimbursement of subsidy payments, such as attestations that terminations of employment were involuntary and the levels of coverage individuals are receiving.

**About the author:**

Kevin Nelson practices in Huddleston Bolen's Employment Law Practice and is Managing Partner of the firm's Charleston, WV office. For more information on Mr. Nelson, visit his biography at: <http://www.huddlestonbolen.com/attorneys.php?a=62>.

For information on Huddleston Bolen, visit the firm's website at <http://www.huddlestonbolen.com/>.