



COBRA / New Jersey State Continuation Update **April 1, 2009**

Background Information:

On February 17, 2009, President Obama signed into law the financial Stimulus Bill which is also known as the *American Recovery and Reinvestment Act of 2009 (ARRA)*. Contained within the bill are a number of provisions that may immediately and significantly impact employee and dependent rights and employer responsibilities with regard to COBRA and State Continuation regulations.

However, it should also be noted that **this legislation only modifies COBRA and State Continuation guidelines in circumstances involving “Involuntary” Termination of employment** as outlined in the legislation and does not constitute a blanket change in those regulations.

COBRA Eligible Groups:

Group health plans for employers with 20 or more employees on more than 50 percent of its typical business days in the previous calendar year are subject to COBRA. Both full and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full-time.

New Jersey companies that are not subject to COBRA (generally those employing fewer than 20 employees) may fall under State Continuation guidelines (N.J.S.A. 17B:27A-27) which are similar but not identical to those contained within the COBRA legislation. **It is suggested that employers who are not sure of their status, check with their insurance carrier(s) to confirm that they are properly classified on the carrier system as COBRA eligible or New Jersey State Continuation eligible.**

Summary of Significant COBRA/State Continuation Changes

- 1. Provides a partial subsidy of COBRA/State Continuation premiums on a temporary basis to certain employees and their dependents, also known as *Assistance Eligible Individuals (AEI's)*.**
- 2. Provides AEI's who previously declined or dropped their continuation coverage with an opportunity to enroll or re-enroll in the new, subsidized program during a *Special Election Period*.**
- 3. May provide an opportunity for some AEI's to switch to a plan offering lower cost coverage if their former employer provides active employees with a choice of multiple plans.**

Common Provisions (COBRA / NJ State Continuation):

- The act provides for a 65% federal subsidy of employee and dependent COBRA and State Continuation premiums for employees defined as *Assistance Eligible Employees (AEI's)*.
- An *Assistance Eligible Individual (AEI)* is an employee who was “involuntarily” terminated (other than for gross misconduct) between September 1, 2008 and December 31, 2009 and eligible for continuation of coverage because of that Qualifying Event. Only AEI's and their eligible dependents are eligible for COBRA or State Continuation under the provisions as modified by ARRA. Employees and dependents who are not classified as AEI's, would fall under prior COBRA or State Continuation guidelines.
- Assistance Eligible Individuals (AEI's):
 - qualify for the full subsidy if, during the tax year the premium assistance is received, their adjusted gross income is up to \$125,000 or \$250,000 if they file jointly.
 - qualify for a modified subsidy if their adjusted gross income is between \$125,000 and \$145,000 or between \$250,000 and \$290,000 if they file jointly. In those cases, a portion of the subsidy would need to be reported as taxable income.
 - whose income exceeds the above limits would have to declare the full amount of the subsidy as taxable income.

However, AEI's can choose to either permanently decline the subsidy or receive it.

- If the employer applies the 2% administrative surcharge to the total plan cost as allowed by law, the subsidy is actually 65% of 102% of the actual premium. The employee would pay 35% of 102%.
- AEI's who elected continuation on or after September 1, 2008, will begin receiving subsidized coverage on a prospective basis, for the “period of coverage” beginning on or after February 17, 2009. A period of coverage is defined as a month or shorter period for which the plan charges a COBRA / State Continuation premium. The premium subsidy starts on March 1, 2009 for plans that charge for continuation on a calendar month period.
- The subsidy can last for up to 9 months; however, it will end earlier if the AEI becomes eligible for any group health plan (including a spouse's plan) or Medicare, when the maximum duration for continuation coverage is reached or when the AEI fails to pay required premiums.

Note: Any AEI who becomes eligible for other coverage and doesn't notify the employer of that eligibility, is subject to a penalty of 110% of the subsidy that was provided.

- All previously covered employees who experienced a qualifying event from September 1, 2008 through February 16, 2009 and declined or dropped COBRA / State Continuation coverage, must now be re-contacted and offered coverage under the new regulations. This is called the *Special Election Period*
- If COBRA/State Continuation coverage is elected during this Special Election Period, coverage begins with the first “period of coverage” on or after February 17, 2009. Coverage is not retroactive to the original date of the involuntary termination.

- It is important to remember that this Special Election Period will not extend the Continuation of Coverage duration beyond the original maximum duration (generally 18 months from the date of the original involuntary termination).
- If an employer agrees to pay all or a portion of a terminated employee's COBRA or State Continuation premium as part of a severance agreement, the employer would not be able to claim the Federal tax credit for the portion of the premium covered under the severance agreement.

Differing Provisions (COBRA vs. NJ State Continuation):

- *For COBRA eligible groups*, the ARRA regulations apply to all group health plans (including self-funded plans) that are subject to continuation of coverage rules – Medical, Dental and Vision plans. It does not apply to Flexible Spending Accounts.

For New Jersey State Continuation plans, the ARRA regulations only apply to Medical plans.

- The Special Election Period begins on February 17, 2009 and AEI's must be provided with the revised notification of their rights, no later than April 18, 2009.

For COBRA eligible groups, the employer must provide the notification. Once the AEI is notified (no later than April 18, 2009), the AEI has 60 days from that date to elect COBRA coverage.

For New Jersey State Continuation plans, the insurance carrier must provide the notification. Once the AEI is notified (again, no later than April 18, 2009), the AEI has only 30 days from that date to elect State Continuation coverage.

- If the employer offers active employees a choice of multiple health plans, the employer may permit the AEI to elect a plan with a less expensive level of coverage than the employee had prior to their termination. AEI's have 90 days from the date of notification to elect to change their coverage.

For COBRA eligible groups, employers may, but don't have to allow employees to make a plan change.

For New Jersey State Continuation plans, the option for an employee to change plans is automatically available to employees during the Special Election Period or the standard 30 day continuation election period.

- The AEI remits 35% of the full continuation premium (including the 2% surcharge if applicable) that is due to the employer.

For COBRA eligible groups, the employer "fronts" the subsidy and claims a payroll tax credit on IRS Form 941 (Employer's Quarterly Federal Tax Return).

For New Jersey State Continuation plans, the insurance carrier "fronts" the subsidy and is reimbursed through tax credits by the federal government.

COBRA / New Jersey State Continuation

Frequently Asked Questions

1. What are some examples of an “involuntary termination?”

- Unilateral employer initiated termination of the employment relationship
- Reduction in hours to zero – layoff or furlough
- Employee resignation when faced with a material reduction in hours
- Employee resignation when faced with a material negative change in the employment relationship (ie) having to make a material change in geographic work location, harassment
- Employee resignation motivated by an employer’s early retirement or buy-out offer that was made as a preliminary action in advance of a layoff

2. What are some examples of termination where loss of coverage is not considered “involuntary termination?”

- Reduction in hours below the minimum required to remain eligible for health insurance
- Death or Disability of the employee
- Divorce
- Child no longer considered a dependent due to age or loss of full-time student status

Note: While members don’t qualify for coverage as Assistance Eligible Individuals under the above circumstances, they will normally be eligible for standard COBRA or State Continuation treatment.

3. Is an employee who was involuntarily terminated between September 1, 2008 and December 31, 2009 but wasn’t covered under the prior health plan, now able to elect coverage under the *Special Election Period* rules?

No. Only individuals who were previously covered and COBRA or State Continuation eligible under the prior plan would be eligible for the “second chance” enrollment under the Continuation guidelines.

4. Are stand-alone Dental and/or Vision plans eligible for the premium subsidy under the new COBRA rules?

Yes. The subsidy is available for all health plans on COBRA-eligible groups, (except for Flexible Spending Accounts (FSA’s)), including voluntary health plans where the employer pays no portion of the cost. Non-health coverage(s) such as Life and Disability are not included.

Note: Under New Jersey Continuation rules, only Medical coverage is eligible for the subsidy

5. If an employee who was originally covered and not subject to a pre-existing condition limitation was involuntarily terminated on or after September 1, 2008 but didn’t elect continuation, will he/she now be subject to a pre-ex if they decide to enroll now during the *Special Election Period*?

No. A carrier cannot impose a pre-existing condition limitation based on a gap in coverage between the original date of involuntary termination and the start of coverage under the *Special Election Period* rules.

- 6. If an employee loses coverage due to a reduction in hours and elects COBRA, continues working for the firm and then several months later is involuntarily terminated, would he/she qualify for the subsidy as an AEI because of the subsequent involuntary termination?**

No, because the qualifying event for their current COBRA benefits was the original reduction in hours, not the subsequent involuntary termination.

- 7. If a spouse has COBRA coverage due to a divorce and the employee later is involuntarily terminated and became eligible for a subsidy, does the subsidy also apply to the divorced spouse?**

No because the spouse's original COBRA eligibility was not tied to the employee's involuntary termination.

- 8. Can an employee have more than 9 months of subsidized coverage?**

It is possible since an employee is entitled to the full 9 months of coverage for each involuntary termination.

- 9. If an employee is involuntarily terminated on December 1, 2009, is it true that they will only have one month of subsidized coverage since the law only covers the period up to December 31, 2009?**

No. The law applies to individuals who are involuntarily terminated from September 1, 2008 thru December 31, 2009. As long as the termination and loss of coverage occurred by December 31st, they would be eligible for the full 9 month subsidy from that date.

- 10. Can an employer decide that they don't want to offer their former employees the enhanced Continuation provisions provided for under ARRA?**

Failure to comply with the law can result in:

- \$110 per day penalty under ERISA
- \$100 per day in IRS excise taxes
- Civil Penalties

Important COBRA / NJ Continuation Links

Department of Labor website outlining new guidelines pertaining to COBRA Continuation Coverage Assistance under ARRA

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

Sample Model Notices for COBRA eligible groups (must be sent by the Employer)

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

IRS website that discusses the COBRA subsidy and the method for employers to seek reimbursement for their premium assistance payments

<http://www.irs.gov/newsroom/article/0,,id=204505,00.html?portlet=7>

NJ Department of Banking & Insurance site containing FAQ's pertaining to groups subject to State Continuation under ARRA

http://www.state.nj.us/dobi/division_consumers/insurance/arra.html

NJ Department of Banking & Insurance Advisory Bulletin 09-SEH-01 outlining general Information pertaining to State Continuation and ARRA

http://www.state.nj.us/dobi/division_insurance/ihcseh/bulletins/sehblt09_01.pdf

NJ Department of Banking & Insurance Advisory Bulletin 09-SEH-02 outlining carrier notification requirements pertaining to State Continuation and ARRA

http://www.state.nj.us/dobi/division_insurance/ihcseh/bulletins/09seh02.pdf

Sample Model Notice for groups eligible for New Jersey State Continuation (will be sent by Insurance Carriers)

http://www.state.nj.us/dobi/division_insurance/ihcseh/bulletins/09seh02carriernotice.pdf

***Note:* New York groups that are not COBRA eligible generally fall under State Continuation guidelines that at the present time, appear to follow the COBRA rules. Specific clarification can be obtained directly from the carrier or by calling the New York State Department of Insurance at (800) 342-3736. Additional information will be provided as it becomes available.**

The above summary has been prepared using a compilation of currently available resources and is only meant to serve as a general overview of the COBRA provisions contained within the **American Recovery and Reinvestment Act of 2009 (ARRA)**.

It is not meant to provide specific advice since individual circumstances can vary from employer to employer and certain provisions may be subject to further interpretation. Before making any decisions, employers should thoroughly review their current situation and consult with their tax, legal or financial advisor or their insurance carrier.

Mid Atlantic Resource Group, LLC

3301 A Highway 66
Neptune, NJ 07753

(732) 922-6300 – Phone (732) 918-7554 – Fax

www.margfinancial.com