

## *New York COBRA Continuation Coverage Q&A*

**IMPORTANT NOTE: All statements contained in this Q&A document are for informational purposes only and should not be viewed as either legal or income tax advice. Please visit the following Web sites for more complete information on the federal American Recovery and Reinvestment Act of 2009:**

**U.S. Department of Labor Web site:**

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

**Internal Revenue Service Web site:**

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

**Or to [empireblue.com](http://www.empireblue.com)**

**([http://www.empireblue.com/employer/noapplication/f4/s3/t0/pw\\_ad067688.doc](http://www.empireblue.com/employer/noapplication/f4/s3/t0/pw_ad067688.doc) )**

**& our disclosure language:**

Questions concerning your Plan or your COBRA continuation coverage rights should be addressed to the contact or contacts identified below. For more information about your rights under ERISA, including COBRA, the Health Insurance Portability and Accountability Act (HIPAA), and other laws affecting group health plans, contact the nearest Regional or District Office of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) in your area or visit the EBSA website at [www.dol.gov/ebsa](http://www.dol.gov/ebsa). (Addresses and phone numbers of Regional and District EBSA offices are available through EBSA's website.)

### Overview

The American Recovery and Reinvestment Act ("ARRA" or the "Act") was enacted on February 17, 2009 (the "Enactment Date"). The Act provides COBRA health insurance premium assistance for eligible employees whose employment is involuntarily terminated between September 1, 2008, and December 31, 2009. The Act introduced a 65 percent federal subsidy of COBRA continuation coverage premiums for up to nine months. Please consult the links above for complete details relating to this federal law.

The federal premium subsidy available under the Act applies to individuals covered under COBRA as well as to individuals covered under state continuation of coverage laws, sometimes referred to as "mini-COBRA." However, the special extended election period available under the Act only applies to federal COBRA coverage. To address this gap, the New York Insurance Law was amended to grant individuals who are not COBRA-eligible but who are eligible for coverage under the state continuation of coverage law, typically groups with fewer than 20 employees, an extended election right.

## General Questions:

### **What is the difference between Federal COBRA and the State Continuation Plan?**

- Federal COBRA applies to groups with 20 or more employees.
- New York state continuation plans generally apply to groups with fewer than 20 employees.

### **What is continuation coverage?**

New York state continuation coverage law gives employees and their families the opportunity to continue their coverage when there is a “qualifying event” that would result in a loss of coverage under an employer’s plan. Depending on the type of qualifying event, “qualified beneficiaries” can include the employee (or retired employee) covered under the group health plan, the covered employee’s spouse, and the dependent children of the covered employee.

Continuation coverage is the same coverage that the Plan gives to other participants or beneficiaries under the Plan who are not receiving continuation coverage. Each qualified beneficiary who elects continuation coverage will have the same rights under the Plan as other participants or beneficiaries covered under the Plan.

### **How long does the COBRA subsidy last?**

Assistance Eligible Individuals (or AEIs) are entitled to receive the COBRA subsidy for up to nine months. However, if they become eligible for other group health coverage or Medicare, or at the end of the maximum COBRA coverage period, entitlement to the COBRA subsidy ends. Any AEI who becomes eligible for other group health coverage or Medicare must provide timely written notice that he or she no longer qualifies for the COBRA subsidy. Failure to do so is punishable by a penalty equal to 110 percent of the COBRA subsidy received after becoming eligible for other coverage.

### **How much is the COBRA subsidy?**

The federally provided COBRA subsidy is 65 percent of the amount required to be paid by the AEI. A payment of 35 percent of the applicable premium made by the AEI is considered a payment of the COBRA premium in full.

### **Will AEIs be taxed on the subsidy received?**

AEIs who earn in excess of certain thresholds are not eligible for the subsidy. Any subsidy extended to them will be recaptured as follows:

AEIs earning:

- More than \$145,000 (\$290,000 for joint return filers) in adjusted gross income will have their income tax increased by the total amount of COBRA subsidy they receive.
- Between \$125,000 and \$145,000 in adjusted gross income (between \$250,000 and \$290,000 for joint return filers) will have their income tax increased by a percentage of their total COBRA subsidy received in that year.

**If an employee qualifies as an AEI, when will they receive paperwork?**

Former employees who may be eligible are required to receive notification within 60 days of the date the Act was enacted. So, by April 18, 2009.

**If an employee qualifies as an AEI, when will the new subsidy be effective?**

The COBRA subsidy program is effective on the first day of coverage availability for their plan after February 17, 2009. For many, this date will be March 1, 2009.

**What will an employee have to do to elect?**

The Model Notice explains what an eligible individual must do to elect to participate in the subsidy program. It is the employee's responsibility to ensure that they meet the minimum qualifications to participate in the subsidy program.

**If qualified, can an employee elect different coverage?**

The Model Notice will offer the opportunity to elect whatever coverage the employee had at the time of your qualifying event. For instance, if they had medical and dental coverage at the time they were involuntarily terminated, they will be afforded the opportunity to elect medical and/or dental under the subsidy program.

**Who is eligible for COBRA or state continuation coverage?**

- Workers and their families who recently lost their health benefits are eligible to continue their group coverage under COBRA or state continuation coverage for a limited period of time.
- Workers who lost their coverage for certain reasons including voluntary or involuntary job loss, reduction in hours, transition between jobs, death, divorce and other life events are typically eligible for COBRA.

**What is different as a result of the stimulus package?**

- Under federal COBRA or state continuation coverage, qualified participants would be required to pay the full premium for coverage up to 102 percent of the cost to the plan, or 150 percent for those approved by the Social Security Administration as disabled. With the recent change from the stimulus package qualified participants will only be required to pay up to 35 percent of the cost to the plan.

**When do employees have to enroll in COBRA?**

- Eligible participants have 60 days from the time they are notified of their COBRA (or state continuation coverage) eligible rights that they will lose their employer health insurance benefits to enroll in COBRA.
- Individuals who were involuntarily terminated prior to the passage of this legislation (February 17, 2009) and on or after September 1, 2008, will receive a 2nd notification of their COBRA (or state continuation coverage) rights under the stimulus and will have an additional 60 days from this 2nd notification to enroll in COBRA.

**If at the time of the qualifying event an employee elected individual COBRA/State Continuation coverage as opposed to family coverage due to cost, can they now change from individual to family to cover the remaining family members because of the subsidy?**

Yes, they can change from individual to family coverage.

**When is the legislation effective?**

The legislation is effective immediately, but for most people that means it is effective with the first plan month after enactment which starts March 1, 2009.

**Eligibility Questions:**

**How does an employee know if they are eligible for COBRA?**

- Most workers and their families who recently lost their health benefits as the result of termination of a worker's employment are eligible to continue their group coverage under COBRA or state continuation coverage for a limited period of time.
- Workers who lost their coverage for certain reasons including voluntary or involuntary job loss, reduction in hours, transition between jobs, death, divorce and other life events are typically eligible for COBRA.
- If a worker qualifies for COBRA, their employer will send a COBRA notification soon after the qualifying event that outlines their COBRA rights.

For additional details regarding COBRA eligibility see the following Department of Labor link: [http://www.dol.gov/ebsa/faqs/faq\\_consumer\\_cobra.HTML](http://www.dol.gov/ebsa/faqs/faq_consumer_cobra.HTML)

**How does an employee know if they are eligible for the COBRA subsidy?**

- If they were involuntarily terminated between September 1, 2008 and December 31, 2009, meet the income thresholds and are not eligible for other group coverage, they are likely eligible for the subsidy provided in the stimulus package.

**Employer Questions:**

**How does an employer know if an employee may qualify for the COBRA continuation coverage subsidy?**

Simply put: In order for the employee to be potentially eligible for the subsidy they must have been **involuntarily terminated during the period September 1, 2008 – December 31, 2009**. The member will be eligible for up to 9 months of the 65 percent premium subsidy through December 31, 2009.

**If an employee resigns or retires from my job, will they qualify for the subsidy program?**

No. You must have been involuntarily terminated from your job in order to qualify. You may still be eligible for COBRA at the full premium.

**If an employee is terminated for gross misconduct will they qualify for the subsidy program?**

No.



### **If an employee qualifies as an AEI, when will they receive paperwork?**

Notifications will be sent to former employees who may be eligible within 60 days of the date the Act was enacted. They should receive these notifications on or around April 18, 2009.

### **If an employee qualifies as an AEI, when will the new subsidy be effective?**

The COBRA subsidy program is effective on the first day of coverage availability for their plan after February 17, 2009. For many, this date will be March 1, 2009.

### **If qualified, can an employee elect different coverage?**

If an AEI, the notice received will offer the opportunity to elect whatever coverage the employee had at the time of your qualifying event. For instance, if they had medical and dental coverage at the time they were involuntarily terminated, they will be afforded the opportunity to elect medical and/or dental under the subsidy program.

### **Will an employee's spouse, dependents or domestic partner qualify for the subsidy program?**

Anyone who meets the criteria above is considered an Assistance Eligible Individual (AEI). Similar to a COBRA qualified beneficiary's dependents election rights, even if the covered employee does not elect COBRA, a **covered spouse or covered child of the involuntarily terminated covered employee may individually qualify as an Assistance Eligible Individual**. A domestic partner does not.

### **I'm an employer and my March premiums are due March 1st. Can I pay 35 percent of the total premiums billed for qualified members?**

- If you have qualified participants under federal coverage continuation (COBRA), you must continue to pay Empire premiums as billed as it is the employer who is responsible for the 65 percent subsidy due the qualified participant.
- If you have members with continued coverage under a state program or you have members in a multiemployer plan, you must continue to pay the full premium until you have provided Empire with the listing of those participants who qualify for the subsidy.

### **I'm an employer. How do I get refunded the 65 percent subsidy on previous premium payments made to Empire?**

- No subsidy payments are available under the federal or State law for coverage periods prior to March 1, 2009.
- For coverage periods beginning March 1, 2009 through December 31, 2009, for AEI's of COBRA eligible groups, it is the employer's responsibility to refund any subsidies to the participants and then make a subsequent claim on your payroll taxes.
- If you have qualified participants under a state continuation program or a multi-employer plan, Empire may be responsible for refunding the 65 percent premiums on any applicable payments made for coverage periods beginning March 1, 2009.

## New York Specific Questions:

### **How do I determine if my group has more or less than 20 employees for COBRA purposes?**

The Department of Labor provides an explanation.

[http://www.dol.gov/ebsa/faqs/faq\\_consumer\\_cobra.html](http://www.dol.gov/ebsa/faqs/faq_consumer_cobra.html).

### **My group has more than 20 employees, what is Empire's role? What do I need to do?**

For groups with 20 or more employees (Federal COBRA eligible) the group must continue to submit full premium to Empire. Any premium issues between the member and the group must be resolved between the Group Benefits Administrator "GBA" and that member.

### **When will Empire start accepting the group's 35 percent premium payments for COBRA enrollees subject to the subsidy?**

To clarify, for COBRA-eligible groups, it is the employer who is responsible for the 65 percent premium subsidy. Therefore, the employer must continue to submit 100 percent of the premium due at all times. For mini-COBRA eligible groups, i.e., groups of under 20, Empire is responsible for the 65 percent premium subsidy for coverage periods beginning March 1, 2009. For those groups, the employer may begin to remit the reduced premium once the group has notified Empire of their Assistance Eligible Individuals (AEIs) and the appropriate application has been submitted.

### **Can I deduct the 65 percent from my current bill if I have COBRA members that are eligible? If I don't pay the current amount my group will my group be termed?**

As stated above, only mini-COBRA groups of less than 20 employees may begin to deduct 65 percent for coverage periods beginning March 1, 2009 once they have notified us of their AEI's and we have enrolled them.

### **How does this impact the group's premium?**

If qualified (group employs less than 20 employees), Empire will pay 65 percent of the state continuation premium, and the member, if eligible for the subsidy, will be responsible for the remaining 35 percent of the premium. (As the insurance carrier, we will seek reimbursement for the 65 percent subsidy from the US Department of the Treasury). For groups with 20 employees or more who are subject to federal COBRA, the employer will continue to be required to remit 100 percent of the payable premium to Empire.

## Communication Questions:

### **Will Empire be sending anything to their groups?**

Yes, on or about April 10, 2009 Empire will send a mailing to small groups.

### **What materials will the group mailings include?**

The mailing includes: a letter to the GBA, a Model Election Notice and an Attestation Form.

### **I'm a GBA and I just received the mailing. What should I do now?**

You are receiving this mailing because we believe that your employer group *may* have **less than 20 employees**. If this is **not true** for your group then no further action is needed in response to this mailing about state continuation.

If this is **true** for your employer group (while not subject to the Federal COBRA law) your employees may be eligible for a special election right and subsidy under the NYS continuation program. The group should fill out Attestation Form and submit back to Empire. Empire will then send notice to member(s) identified on the form advising them of their eligibility but the employer is responsible to submit all completed enrollment forms.

### **What should groups do now?**

Employers receiving this communication should:

1) If your employer group is subject to State Continuation guidelines (less than 20 employees), **complete the Attestation Form** for all employees terminated during the period September 1, 2008 through December 31, 2009 and **return it to Empire within 5 days via fax to 800-780-1224**.

## **AND**

2) Complete all blank fields on the Model New York State Continuation Coverage Election "Notice" and Mail the "Notice" and mail by April 18, 2009 to individuals who were both voluntarily and involuntarily terminated at any time between September 1, 2008 through February 17, 2009, regardless of whether or not the member elected COBRA previously, or, if they elected it, let it lapse. Notice regarding the availability of the subsidy is also required to be provided to individuals who are involuntarily terminated during the remainder of the period extending through December 31, 2009.

### **Why does the group have to send Empire the Attestation Form?**

We are requesting that you return the Attestation Form to verify that a member is eligible for state continuation as outlined by NYS, and has been terminated from employment between September 1, 2008 and December 31, 2009, and is not eligible for other group health coverage or coverage under a government program, such as Medicare. It should be faxed to telephone number 1-800-780-1224 immediately. (Please be sure the fax transmission was successful)

**What will Empire do with the Attestation information once it's submitted by the group?**

Empire will use the information provided to generate a general notice of eligibility mailing to those members indicated on the Attestation form as a follow-up to the letter and Election Notice we are requesting be sent by employers of mini-COBRA groups. This is separate from and in addition to the mailing that the employer is responsible for executing.

**How do groups know which former employees are eligible?**

The ARRA refers to individuals who qualify for this subsidy as "Assistance Eligible Individual or "AEI's." See General Questions at the beginning of this document for details.

**What should employees do with the model notice?**

Eligible employees should send the completed Election Notice back to their employer along with any other forms or documents the employer requires as part of the employer's standard COBRA enrollment procedures.

**What does a group do with these Model state continuation Notices when they are returned to them by the employees?**

The employer should send the Model Notice to Empire with the actual COBRA enrollment form. It should be faxed to telephone number 1-800-780-1224 immediately. (Please be sure the fax transmission was successful)