

TECH FLEX

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ISSUE IV

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IRS RELEASES MORE GUIDANCE ON COBRA PREMIUM SUBSIDY

As reported in the February 2009 Tech Flex [\[LINK\]](#), President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA) on February 17, 2009. One of the provisions of ARRA results in modifications to the rules in relation to the Consolidated Omnibus Budget and Reconciliation Act (COBRA). ARRA provides that certain involuntary terminated individuals and their family members may be eligible to receive subsidized COBRA premiums for a nine (9) month period. The plan sponsor is required to provide the subsidy and then seek a reimbursement from the Internal Revenue Service (IRS) via a reduction to the plan sponsor's employment taxes due (via Form 941).

The IRS previously provided questions and answers related to obtaining the reimbursement mentioned above. Recently, (March 31, 2009), the IRS released additional guidance in the form of Notice 2009-27 which consists of 58 questions and answers providing guidance on various aspects of the COBRA premium subsidy ARRA provisions. Topics discussed in Notice 2009-27 include defining the events that will be considered to constitute involuntary termination, explaining who qualifies as being eligible for the subsidy, describing the calculation of the premium subsidy, elaborating

on the types of coverage eligible for the subsidy, as well as the beginning and ending time frames for the COBRA premium subsidy period. A brief summary of the topics discussed in the IRS Notices is provided below.

Involuntary Termination

Notice 2009-27 stipulates that involuntary termination means “severance from employment due to the independent exercise of the unilateral authority of the employer to terminate employment, other than due to the employee’s implicit or explicit request, where the employee was willing and able to continue performing services.” (Q&A-1)

Additionally, per the IRS guidance “an employee-initiated termination from employment constitutes an involuntary termination from employment for the purposes of the premium reduction if the termination from employment constitutes a termination for good reason due to employer action that causes a material negative change in the employment relationship for the employee.”

Examples of involuntary termination provided by the IRS include:

- An involuntary reduction to zero hours caused by a lay-off, furlough or other suspension of employment.
- A resignation by the employee as a result of a material change in the geographic location of employment for the employee.
- A lockout of the employees initiated by the employer.
- An election by an employee of severance package and termination of employment where the employer indicates that after the offer period for the severance package, a certain number of remaining employees in the employee’s group will be terminated.
- An employer-imposed reduction in the employee’s number of hours that he/she would be scheduled to work.

However, the IRS stated that a reduction in hours that is not a reduction to zero would not in itself constitute an involuntary termination.

Calculation of Premium Reduction

The IRS guidance states that the amount that an assistance eligible individual must pay in order to receive the subsidy is that amount actually charged the assistance eligible individual. Generally this would be 102% of the applicable premium as allowed under COBRA. Please note that the IRS further explained that “if the premium that would be charged the assistance eligible individual is less than the maximum COBRA premium, for example if the employer subsidizes the coverage by paying all of part of the cost, the

amount actually charged the assistance eligible individual is used to determine the assistance eligible individual's 35 percent share." (Notice 2009-27, Q&A-20)

Example 1 An employee is involuntarily terminated and qualifies for the COBRA premium subsidy. The cost for continuing his/her family coverage under COBRA is \$1,000 which includes the 2% administrative fee. The employee would be required to pay \$350.00 (35% of \$1,000) and would receive a subsidy of \$650.00 (65% of \$1,000).

Example 2 The same facts in Example 1, except that the employer pays \$500 of the monthly COBRA premium as part of a severance package. The employee would be required to pay \$175.00 (35% of \$500) and would receive a subsidy of \$325.00 (65% of \$500) plus the \$500 per month as agreed to by the employer in its severance offering.

End of Reduction Period

Under ARRA, an individual ceases generally to be eligible for the subsidy when other coverage is available under another group health plan. The IRS has confirmed that an individual who otherwise meets the requirements for coverage under a group health plan, but who cannot enroll with coverage effective immediately will not cease to be eligible for the subsidy until the first day that the coverage can become effective.

Example: An assistance eligible individual receiving COBRA becomes reemployed at a new employer. The new employee is eligible to enroll in benefits at his/her new employer's open enrollment period taking place between November 1st through the 15th for benefits beginning the following January 1st. The individual's subsidy eligibility would end as of the effective date of coverage, January 1st.

Recapture of Premium Assistance

Notice 2009-27 states that a plan may not refuse to provide the premium subsidy to an individual because of an individual's income. The COBRA premium subsidy must be provided to an assistance eligible individual upon payment of 35% of the required COBRA premium UNLESS the individual has notified the plan that the individual has elected the permanent waiver of the COBRA premium reduction.

For a copy of IRS Notice 2009-27, please click on the link provided below.

<http://www.irs.gov/pub/irs-drop/n-09-27.pdf>

DOL PROVIDES FURTHER ARRA GUIDANCE

In the March 2009 Tech Flex [\[LINK\]](#) it was reported that the Department of Labor (DOL) released on February 26, 2009, a new webpage created to provide additional information in relation to the ARRA COBRA provisions. The DOL webpage contains

links to frequently asked questions, fact sheets, posters and flyers as well as to the COBRA ARRA legislation itself.

This month the DOL continued to enhance its guidance including an expansion of the "Premium Reduction FAQs for Employers." As the DOL ARRA website is frequently being updated with new information, it may be useful to periodically access the DOL webpage listed below for the latest ARRA information.

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

MINNESOTA IMPOSES SECTION 125 PLAN MANDATE

Effective July 1, 2009, Minnesota law requires employers that (1) do not offer health insurance benefits to their employees and (2) have 11 or more full-time equivalent employees to establish and maintain a Section 125 plan to allow their employees to purchase health coverage with pre-tax dollars. However, this new requirement does not require employers to offer or contribute to health insurance benefits. In addition, the Minnesota law only requires the establishment of a Premium Only Plan (POP) to pay for insurance premiums but does not require the establishment of a Health Care Spending Account.

Specifically, the new law (62U.078) states:

Subd. 2. Section 125 Plan requirement.

(a) Effective July 1, 2009, all employers with 11 or more current full-time equivalent employees in this state shall establish and maintain a Section 125 Plan to allow their employees to purchase individual market or employer-based health coverage with pretax dollars. Nothing in this section requires employers to offer or purchase group health coverage for their employees. The following employers are exempt from the Section 125 Plan requirement:

(1) employers that offer a health plan as defined in section 62A.011, subdivision 3, that is group coverage;

(2) employers that provide self-insurance as defined in section 62E.02; or

(3) employers that have no employees who are eligible to participate in a Section 125 Plan.

It is important to note that employers may "opt out" of this requirement by certifying to the Commissioner of Commerce that they have received education and information on the advantages of Section 125 plans and have chosen not to establish such a plan.

For a copy of the "opt out" form, please click on the link provided below:

<http://www.commerce.state.mn.us/Section125/Section125.html>

MINNESOTA IMPOSES CAFETERIA PLAN CONTRIBUTION REPORTING REQUIREMENT

A recently enacted Minnesota law (MN. Sec. 290.0678), effective for taxable years beginning after December 31, 2008, for premiums paid in January 2009 and thereafter, requires all employers to make a new annual report to each Minnesota employee. The report must include the dollar amount of any health insurance premiums paid by the employee (on a pre-tax basis) through a "cafeteria" plan under Section 125 of the Internal Revenue Code.

The new report must be made when the employee is sent a Internal Revenue Service Form W-2 by the employer. The first reports will be due in January 2010 and must include all premiums paid during 2009. The new report is to be provided to employees in order for them to claim a credit for Minnesota state taxes, if applicable. The credit is allowed only for individuals with household income for the taxable year between:

- (1) 275 percent and 300 percent of the federal poverty guidelines for the applicable family size if the individual has dependents; or
- (2) 200 percent and 275 percent of the federal poverty guidelines for the applicable family size if the individual has no dependents.

NEVADA MODIFIES MINIMUM WAGE AND OVERTIME RULES

Minimum Wage:

Effective July 1, 2009, the two tiered Nevada minimum wage rate will be increasing as follows.

- Employer's who make a qualified health insurance plan available to their employees can pay a minimum wage of no less than \$6.55 per hour.
- Employers who do not make a qualified plan available will have to pay no less than \$7.55 per hour.

Overtime:

Effective July 1 2009, and in conjunction with the two-tiered minimum wage change noted above, employers must pay 1 ½ times (1.5) an employee's regular wage rate whenever an employee who is paid less than 1 ½ times the applicable minimum wage rate works more than 40 hours in any workweek **or more than 8 hours in any workday, unless otherwise exempted.**

The following amounts are the wage rates below which daily overtime may be applicable.

For employees to whom qualifying health benefits have been made available by the employer:

- If the employee is paid less than \$9.825 per hour. (Calculated by taking minimum wage, effective July 1, 2009, and multiplying by 1 ½ times ($\$6.55 \times 1.5 = \9.825)).

For all other employees:

- If the employee is paid less than \$11.325 per hour. (Calculated by taking minimum wage, effective July 1, 2009, and multiplying by 1 ½ times ($\$7.55 \times 1.5 = \11.325)).

WISCONSIN INCREASES MINIMUM WAGE

Effective July 24, 2009, the minimum wage rate in Wisconsin will be changing from \$6.50 per hour to \$7.25 per hour with the exception of tipped opportunity/training and youth employee minimum hourly rate where the rate will be \$5.90 per hour. The tipped adult employee's minimum hourly rate will remain at \$2.33 per hour in direct cash wages. Therefore, the maximum tip credit will be changing from \$4.17 per hour to \$4.92 per hour. ($\$2.33 + \$4.92 = \$7.25$).

In addition, the tipped opportunity/training and youth employee minimum hourly rate will remain at \$2.13 per hour in direct cash wages. Consequently, the maximum tip credit will remain at \$3.77 ($\$2.13 + \$3.77 = \5.90).

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