

UPDATE – COBRA Subsidy: What It Means For Employers: Additional Information

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As we advised you in our Client Alert issued on February 25, 2009, the American Recovery and Reinvestment Act of 2009 (H.R. 1, S. 1) (the “Act”), amended the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), including state “mini-COBRA” coverage, to create a government subsidy for certain eligible individuals (known as “assistance eligible individuals”).

As we also advised you, the government subsidy is not paid to the individual electing COBRA coverage. Rather, eligible individuals (or anyone else on behalf of the individual other than the individual’s employer) are to pay 35 percent of the required COBRA premium. The entity that provides the coverage and collects the individuals’ premiums must cover the remaining COBRA premium (*i.e.*, 65 percent). That entity thereafter will receive reimbursement through a payroll tax credit.

We have updated the Client Alert to reflect a changed interpretation with respect to which entity will receive reimbursement through the payroll tax credit for group health plans that are not multi-employer plans. The updated Client Alert is available on our Web site, [here](#). As explained in the updated Client Alert, reimbursement will be determined as follows:

- The **plan** will be entitled to reimbursement if the group health plan **is** a multi-employer plan;
- The **employer** will be entitled to reimbursement if the group health plan is **not** a multi-employer plan, and is:
 - subject to federal COBRA (as opposed to state “mini-COBRA” laws),
 - or**
 - fully or partially self-insured;
- The **insurer** will be entitled to reimbursement if the group health plan:

- is **not** a multi-employer plan,
- is **not** subject to federal COBRA (for example, plans subject to state “mini-COBRA”), and
- is fully insured.

We also want to update you to let you know that on February 26, 2009, the Internal Revenue Service (“IRS”) issued guidance to help employers claim the payroll tax credit. The guidance (“COBRA: Answers for Employers”) is in the form of questions and answers and is posted on the IRS Web site and is intended to assist employers in completing the revised 2009 Form 941 (“Employer’s Quarterly Federal Tax Return”). This is the first guidance issued by the IRS, and as we advised in our earlier Client Alert, the Department of Labor is required to provide model notices no later than March 19, 2009. Thus, we expect that additional guidance will be forthcoming to assist employers in the administration of the new subsidy.

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