

>> Q & A - COBRA WEBINAR 3.19

Q-1 If we allowed an employee who was terminated for Gross Misconduct to have COBRA coverage, his s/he eligible for the subsidy?

A-1 During the March 24, 2009, DOL/IRS webcast this question was addressed and the agencies indicated that the regulations are not clear.

Under the COBRA regulations, if an individual is fired for gross misconduct, then an employer is not mandated to offer COBRA coverage. However, if the employer makes the decision to offer COBRA coverage, regardless of the reason for termination and the employee in question satisfies all other requirements as an assistance eligible individual, then it appears the employee would be eligible for the COBRA subsidy as well.

Q-2 What if the employee was laid off on 4.30.09 and on company paid COBRA through January 31, 2010. When would the nine month clock start?

Q-3 What if the company pays for the first three months of COBRA? What effect will that have on the employee?

Q-4 If we offer an employee a separation package with severance and offer to pay for COBRA coverage for "x" amount of time, how does that relate to the Subsidy? Are we still required to offer the Subsidy and at what point - In the beginning or after the employer paid portion? For example, if the employer pays two months of COBRA coverage as part of severance, how would that work?

A-2-4 It is not clear from the question if the company is reimbursing the full 102% of the COBRA premiums or if the former employee is making payroll contributions during the period. The regulations indicate that the assistance eligible individual pays 35% of the premium charged. Therefore, if the former employee is making payroll contributions beginning May 1, 2009, the nine months of Subsidy eligible would begin on May 1. However, what is not clear is if the employer is paying the full 102% of the COBRA premium.

We have read comments that for the period in which the employer pays the full 102% COBRA premium that this period would apply towards the nine month COBRA subsidy period. Additional guidance is needed and expected from the IRS.

- Q-5** Who is responsible for sending out the notices - Trion or employer?
- A-5** As the plan sponsor of the plan, the employer is responsible to provide all notices required under COBRA. For those employers for whom Trion is the COBRA Administrator, Trion will be mailing the required notices for our clients.
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- Q-6** Will Trion be sending us a spreadsheet for identifying the COBRA participants who are eligible?
- A-6** This answer depends on when you became a client of Trion's COBRA Administration Department. For those who have been a client of Trion on or before September 1, 2008, Trion will provide you with a listing of all individuals with a qualifying event date on or after September 1, 2008. For those clients who are new to Trion's COBRA Administration Department, you will also receive a spreadsheet file to use with your prior administrator in order to identify individuals with a qualifying event on or after September 1, 2008.
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- Q-7** Will Trion be providing an updated census file specification so that we know where to include the termination reason code?
- A-7** Trion will be working with our clients to establish new census file layouts. We realize that current data file transmissions come in many forms and will be working on an individualized method to assist in modifying census files.
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- Q-8** If a participant's 18-month period would expire PRIOR to the nine month Subsidy period, is his/her COBRA period extended or is the original expiration date used?
- A-8** The standard COBRA regulations apply for the determination of the length of COBRA coverage. The COBRA Subsidy does not extend the COBRA coverage period beyond the 18-month COBRA period. In addition, if a qualified beneficiary's COBRA coverage would terminate due to non-payment of premium, then the COBRA subsidy would end as well.
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Q-9 Is “termination date” the date of termination of employment or the termination date of employer sponsored plan coverage?

A-9 The COBRA qualifying event date is the date in which the qualifying event occurred, *not* the date in which coverage is lost.

During the March 24, 2009 DOL/IRS webcast, an example was provided as follows: if the termination of employment occurred on August 15, 2008 (qualifying event date) and the loss of coverage date was September 1, 2008 – this individual would not be eligible for the COBRA subsidy as the qualifying event date occurred prior to September 1, 2008.

Q-10 According to our policy, if an associate is off work for a total of 52 consecutive weeks, (disability) the associate is automatically termed. Does that associate qualify under the stimulus plan?

A-10 The termination of employment would be considered an involuntary termination and the associate would be considered an assistance eligible individual.

Q-11 Will Trion provide the same level of support to COBRA administration for customers who came on-board effective March 1, 2009?

A-11 Trion’s COBRA Administration Department will provide assistance to all COBRA administrative clients so they are compliant with the regulations.

Q-12 Is the joint annual income at \$125,000 (regarding the eligibility is limited or eliminated)?

A-12 The COBRA subsidy is phased out for individuals earning \$125,000 up to \$145,000 and eliminated for individuals earning \$145,000 or more. For those families filing a joint tax return, the COBRA Subsidy is phased out for joint filers earning \$250,000 up to \$290,000 and eliminated for joint filers earning \$290,000 or more.

Q-13 Does high income refer to annual income or adjusted gross income?

A-13 The high income is based on the modified adjusted gross income as reporting on the Form 1040.

Q-14 Our insurance plan ends the day after someone leaves when s/he terminates employment. Does that mean our plan would require the Subsidy as of 2/18/09?

A-14 The Subsidy is available for assistance eligible individuals with an involuntary termination between September 1, 2008, through December 31, 2009. Additionally, if the plan's coverage terminates date of term (as opposed to end of month following) the Subsidy would be available for COBRA periods beginning on or after February 17, 2009.

Q-15 Our open enrollment is 3/1/09. We would still have to offer them to sign up for a different plan 3/1/09? Help!

A-15 The standard COBRA regulations apply and if active employees are permitted to change plans on March 1, 2009, the COBRA qualified beneficiaries would be able to switch plans that date as part of the open enrollment process.

Q-16 Would the death of an employee be considered "voluntary" or "involuntary" under the new definition? Unfortunately, there is a reason for the question....

Q-17 Is a death of an associate voluntary or involuntary for a spouse to qualify for the COBRA Subsidy?

A-16-17 During the March 24, 2009 DOL/IRS webcast, it was indicated that the death of an employee *would not* be considered an involuntary termination. Additional information on this issue may be included within the upcoming IRS guidance.

- Q-18** Are we required to post anything on our company's bulletin boards?
Q-19 Are COBRA eligible employers required to post a notice on COBRA Subsidy?

A-18-19 At this time there are no requirements for the employer to post a notice on the company's bulletin board, however the DOL does have sample job posting notices on their website that can be used. These sample notices can be accessed at:
<http://www.dol.gov/ebsa/cobra.html>

Q-20 I work for a company that uses Trion as our COBRA Administrator for several years now. Will I have to designate if the AEI is a 1st chance or 2nd chance individual - or is this tracked by Trion?

A-20 Employers who utilize Trion as their COBRA administrator will be required to notify Trion only that the individual is an involuntary termination. There will be no secondary indicator as to whether they are a new, existing or second chance qualified beneficiary.

Q-21 Must the ineligibility form be returned by employee?

A-21 If an individual is not eligible for the COBRA premium Subsidy s/he is required to notify the plan in writing. The DOL provided the sample form that can be used for this purpose.

Q-22 Do we send the new general notice to all current employees?

A-22 The DOL has supplied two model "general notices" and updated their guidance as to which form will be provided to which COBRA qualified beneficiary. The first model notice is referred to as the "Full Version". The Full Version general notice would be provided to all COBRA qualified beneficiaries, regardless of the type of qualifying event, who have a qualifying event between September 1, 2008, and December 31, 2009, and have not yet been provided with any COBRA election notice.

The second model notice is referred to as the "Abbreviated Version". The Abbreviated Version general notice would be provided to all COBRA qualified beneficiaries, regardless of the type of qualifying event, who have a qualifying event on or after September 1, 2008, elected coverage and are currently enrolled in COBRA.

Q-23 For the employer using Trion as the COBRA administrator, will the participants return the forms to waive the Subsidy to the employer or will Trion?

A-23 The qualified beneficiaries would return the COBRA election notice, request for treatment as an assistance eligible individual and the participant notification of ineligibility to the Trion Cobra Administrator department's attention.

Q-24 Any clarification on whether failure to return from a medical leave is an involuntary or voluntary termination?

A-24 There is no guidance at this time specific to medical leaves, but if an individual's employment with the company is terminated because s/he did not return from an approved leave of absence, this could be considered an involuntary termination and the employee would be considered an assistance eligible individual.

Q-25 Explain further the comment about the March 31 deadline for retro individuals.

A-25 It appears this question is regarding the Trion COBRA Administration's deadline for submitting the data required to provide the COBRA subsidy notice. In order to assist our clients to meet the April 18, 2009 notice deadline, our clients will need to provide the required termination reasons in order for the appropriate forms to be mailed.

Q-26 Will the employer be required to issue W2 forms to 'termed' employees to reflect the Subsidy?

A-26 The IRS has not yet determined how, or if, the employer will report the Subsidy amount provided to the assistance eligible individual in order for the individual to complete their Form 1040. Informal IRS comments recently published indicated that the IRS did not plan to require the use of a Form W2, but have not ruled out utilizing this form or a special Form 1099.

Q-27 As Trion handles all our COBRA requirements, will Trion be doing the refunding or crediting for the AEI overpayments?

A-27 Trion is implementing processes to calculate and provide a credit to any assistance eligible individual who made an overpayment of their COBRA premiums. An additional process will be developed for individuals that may require a refund.

Q-28 If a full-time employee is laid off and is therefore eligible, but that employee accepts part-time employment after the fact, is the employee still eligible?

A-28 When an employee is laid off, this would be considered a qualifying event for COBRA coverage and an involuntary termination of employment under the COBRA subsidy program. Should the assistance eligible individual obtain a new job, s/he would only lose eligibility for the COBRA subsidy program if s/he is eligible to enroll in benefit coverage at the new job.

Q-29 If an employee resigns, is this considered an involuntary and eligible AEI event?

A-29 More details would need to be provided as to why the employee resigned to make this determination. For example, if the employee resigned due to performance issues and was asked to resign by the employer, this could be considered an involuntary termination of employment and eligible for the COBRA subsidy. If the employee resigned to take a job at a different company, this would be considered a voluntary termination and the qualified beneficiary would not be eligible for the COBRA subsidy.

Q-30 If an employee was terminated for work performance, is s/he still eligible?

A-30 An employee terminated for performance issues and offered COBRA would be eligible for the COBRA Subsidy.

Q-31 This program does not separate workforce reduction?

A-31 This question is not clear. Making the assumption it is addressing a layoff of employees, individuals who lose their employment due to a layoff would be eligible for the COBRA Subsidy, as this is considered an involuntary termination of employment.

Note: during the DOL/IRS webcast on March 24, informal comments were made to indicate that in the situation where an employer announces an upcoming layoff and is soliciting “volunteers,” any individual who volunteers for the layoff would also be considered an involuntary termination. Again, these are only informal comments. Official guidance is needed from the IRS.

Q-32 We have less than 20 employees and are not under COBRA. I assume the same rules apply to us only we have to self administer, correct?

A-32 For companies that have less than 20 employees and are not subject to the Federal COBRA regulations, the regulations apply to only those companies within states that have the state mini-COBRA laws. What is not clear is an employer not subject to COBRA nor a state mini-COBRA law. More guidance is needed from the federal agencies.

Q-33 Will Trion assist with the reporting requirements?

Q-34 Who is responsible for the IRS filing and what form is required? We use ADP for our payroll process. How are they notified?

Q-35 Will we receive something from Trion that can be given to IRS and ADP?

Q-36 What reports will be provided by Trion to file with 941 and when will it be available?

A-33-36 The employer is responsible for the IRS payroll tax filing. For Trion's COBRA Administration clients, Trion is preparing enhancements to our reporting capabilities to assist clients with these requirements. More information will be provided regarding these reports when it is available.

Q-37 If Trion did not send out payment coupons for us before, can we still do our own coupons?

A-37 Under the Federal COBRA regulations, an employer is not mandated to issue payment coupons. However, payment coupons provide the COBRA qualified beneficiary with important information such as the premium amount and due date.

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