

April 3, 2009

Compliance

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# ALERT

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## » IRS PUBLISHES COBRA SUBSIDY GUIDANCE

The Treasury Department has released their much anticipated guidance regarding the COBRA Subsidy provisions that are included in the American Recovery and Reinvestment Act of 2009 (ARRA). In question and answer format, Notice 2009-27 provides many examples on issues such as:

- events that qualify as involuntary terminations of employment;
- definition of an assistance eligible individual;
- calculation of the premium reduction;
- type of benefit coverage eligible for the premium reduction;
- the premium reduction period;
- recapture of the premium assistance subsidy; and
- the extended "2nd chance" election period.

This **Trion Compliance Alert** focuses on a few of the important items that the notice addresses.

To read the entire document, click here: [IRS Notice 2009-27](#) or view on [Trion COBRA webpage](#).

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### INVOLUNTARY TERMINATION

When the original regulations were released, many questions surrounded the definition of what constitutes an "involuntary termination." Notice 2009-27 provides the details of what circumstances would qualify as an involuntary termination under the ARRA in the first questions and answers section.

The guidance clarifies that:

- an involuntary termination occurs when the employer takes action to end the individual's employment status including someone who was terminated for cause.
- a reduction of hours is *not* an involuntary termination. However, an employee's voluntary termination in response to a reduction in hours may be an involuntary termination.

- a lay-off, furlough, or other suspension of employment resulting in a loss of health coverage, is an involuntary termination for purposes of the premium reduction.
- an employee who is terminated in return for a severance package (a “buy-out”) 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 would be considered an involuntary termination.
- involuntary termination includes an employee who resigns as the result of a change in the geographic location of employment.
- if there is a work stoppage as the result of a strike initiated by employees or their representatives, this would not be considered an involuntary termination.
- an involuntary termination does not include the death of an employee or absence from work due to illness or disability, nor does an involuntary termination include qualifying events such as divorce or a dependent child ceasing to be a dependent child under the requirements of the plan.

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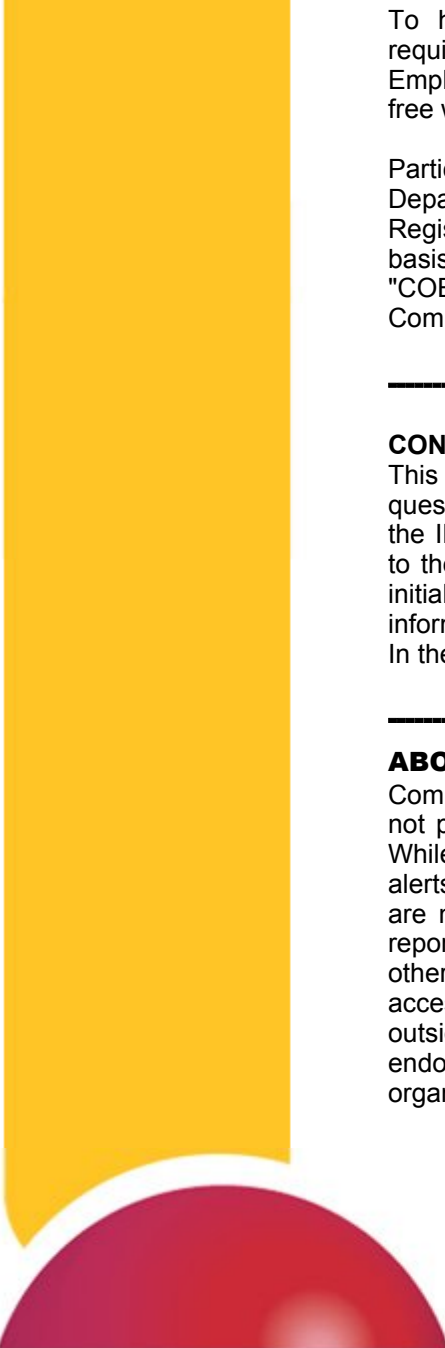
### **ADDITIONAL KEY GUIDANCE**

In addition to all the questions surrounding “involuntary termination,” the IRS guidance addresses many of the questions Trion has received from our clients. The following provides the IRS response to a few of the more commonly asked questions.

- The involuntary termination and loss of coverage must occur during the period from September 1, 2008 through December 31, 2009. For example, an individual who had an involuntary termination on August 15, 2008, however the COBRA effective date was September 1, 2008, would *not* be eligible for the COBRA premium subsidy.
- An individual may become an assistance eligible individual more than one time.
- If an employer provides a severance agreement to an assistance eligible individual and the severance plan begins on the first date of COBRA continuation coverage, the COBRA Subsidy period begins on the first date of COBRA continuation of coverage. The guidance does provide examples on how to calculate the applicable premium and the employer’s payroll tax credit for these types of agreements.
- The guidance confirms that the COBRA premium subsidy is not available for individuals who are not COBRA qualified beneficiaries. This includes a spouse or existing dependent child not covered before the qualifying event and added to the coverage during a later enrollment period. In addition, if an individual does not meet the definition of a qualified beneficiary under Federal COBRA (ie. a domestic partner), the individual’s coverage is *not* eligible for the premium reduction. The guidance includes examples on how to calculate the premium for a plan providing coverage to an assistance eligible individual who has a non-assistance eligible dependent.
- If an assistance eligible individual makes the permanent election to waive his/her right to the premium reduction due to high income in 2009, the individual may not later reverse this waiver for the 2010 coverage period.

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**THE U.S. DEPARTMENT OF LABOR IS HOSTING A SECOND WEBCAST ON THE COBRA SUBSIDY AND NOTICES**



To help employers and plan administrators understand the new requirements under the ARRA, the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) will host a second free webcast on Monday, April 6.

Participants in the webcast with the Labor Department are the U.S. Department of the Treasury and the Internal Revenue Service. Registration is required and available on a first-come, first-served basis. Visit EBSA's Web site at [www.dol.gov/cobra](http://www.dol.gov/cobra) and click on "COBRA ARRA Second Compliance Assistance Webcast" under Compliance Assistance Webcasts/Seminars/Workshops.

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## **CONCLUSION**

This Trion Compliance Alert only highlighted a few of the many questions and answers provided within the IRS guidance. In addition, the IRS indicates that it continues to review additional issues relating to the premium reduction provision that are not addressed within this initial notice and additional guidance may be forthcoming. As more information becomes available, Trion will continue to provide updates. In the interim, please contact us with any questions you may have.

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