



Revised Guidance Effective April 9, 2009

Federal Stimulus – COBRA Premium Assistance Information for Small Employers and Insurers Providing Coverage under State Continuation Coverage Law.

The federal stimulus bill provides COBRA premium assistance to former employees covered under federal COBRA law and to former employees covered under state continuation coverage law. State continuation coverage is sometimes referred to as “mini-COBRA.” If an employer has fewer than 20 employees, those employees receive continuation coverage under the state continuation law rather than the federal law. The provisions of the federal stimulus bill are not identical for both groups. This fact sheet discusses the changes that the federal stimulus bill makes to state continuation coverage.

In addition, please note that on April 1, 2009, the Governor signed Sub. H.B.2 which amended ORC 3923.38 and 1751.53, the state continuation coverage laws. Insurance policies issued, delivered or renewed after April 1, 2009, must include the following changes to state continuation law:

- Coverage has been extended from 6 months to 12 months
- Entitlement to unemployment compensation is no longer required
- Employees must be involuntarily terminated, other than for gross misconduct
- Continuation coverage must include prescription drug coverage if it is included in the group coverage.

Will small employers, those with less than 20 employees, have to pay the 65% of the state continuation coverage premium not paid by the former employee?

No. Small employers will not be obligated to pay any portion of the premium. The former employee will pay 35% of the premium and the insurance company will claim the credit from the IRS for the 65% of the premium not paid by the former employee.

How long does the subsidy last under state continuation law?

With the recent change in the length of state continuation coverage from 6 months to 12 months, Ohioans may be eligible for the entire 9 months of federal subsidy. Under federal law, the subsidy ends when a person is no longer eligible for state continuation coverage or when the individual becomes eligible for other group insurance, or Medicare (whichever comes first).

Who is eligible for coverage under the state continuation law?

In order to be eligible under the newly revised state continuation law, an employee must have

been:

- (1) continuously insured under a group policy during the 3 month period preceding the termination of employment;
- (2) involuntarily terminated for reasons other than gross misconduct;
- (3) not covered or eligible for coverage under Medicare; or under other group coverage.

An employee should check the terms of the employer's group insurance coverage to determine what continuation benefits the employee is entitled to.

If an employee elects state continuation coverage and the employer then renews the policy after April 1, is the employee entitled to the benefits in the new policy?

Yes. Any changes made to the terms of the coverage that apply to similarly situated active employees and their families will also apply to qualified beneficiaries receiving state continuation coverage.

When does the federal premium assistance law become effective?

The law became effective on February 17, 2009. However, under a transition rule, the regular premium amount may continue to be paid by the former employee for up to two months, March and April. Thus a former employee who has already paid the entire premium amount for these two months is entitled to be reimbursed or credited for the amount of the overpayment by the insurance company.

Will eligible individuals who previously terminated or declined to elect group continuation coverage have another opportunity to elect group continuation coverage and receive the subsidy?

No. For individuals receiving state continuation coverage, there is no state equivalent to the federal COBRA extended eligibility period. Only employees who have already elected continuation coverage or who an election available and were or will be involuntarily terminated through December 31, 2009, are eligible for the subsidy.

Do small employers in Ohio (those with fewer than 20 employees) have to notify employees at the time they are involuntarily terminated of the federal premium subsidy?

Ohio Revised Code §3923.38 requires small employers to notify the employee of the right to continuation at the time the employee is notified of the termination of employment. The Department of Labor has provided a model Continuation Coverage Election Notice to be used to notify employees who terminated on or after Feb. 17, 2009, of their state continuation election opportunity as well as of the availability of the federal premium subsidy. The Department of Insurance has used the model notice provided by the Department of Labor and modified it to comply with Ohio law. The notice can be found on the Ohio Department of Insurance web site and can be obtained through this link:

<http://www.insurance.ohio.gov/ConsumServ/COBRAContinuationCoverageElectionNotice.doc>

How will people who are currently receiving state continuation coverage receive notice of the premium subsidy provided by the federal government?

The insurer* is required to send the Continuation Coverage notice to former employees (and their dependents) who were terminated after September 1, 2008, and who are currently receiving state continuation coverage. If the former employee qualifies for the subsidy, it applies retroactively to the first premium payment period that began on or after February 17, 2009. This notice must be provided by April 18, 2009. The Department of Insurance has used the model notice provided by the Department of Labor and modified it to be appropriate for individuals currently receiving state continuation coverage by removing the election form. The notice can be found on the Ohio Department of Insurance web site and can be obtained through this link:

<http://www.insurance.ohio.gov/ConsumServ/COBRAAlternativeNoticeCurrentRecipients.pdf>

Please note that the federal law allows the insurer “or other entity” to issue the notice.

Is the insurer required to accept the employee’s 35% premium payment as payment in full?

Yes. The insurer is required to accept the 35% payment as payment in full for continuation of the group coverage for the former employee. The insurer will claim the unpaid 65% of the premium as a credit against payroll tax owed on IRS Form 941.

What other information is the insurer likely to request from the small employer?

Small employers may be asked to provide the insurance company with information to verify the former employees’ eligibility under the statute. Such documentation may include:

- Attestation of involuntary termination, including the date of the involuntary termination for each covered employee whose involuntary termination is the basis for eligibility for the subsidy;
- Proof of each former employee’s eligibility for state continuation coverage and election of state continuation coverage; and
- Request for treatment as an assistance eligible individual.

What if there is a disagreement as to whether a former employee is eligible for group continuation coverage?

Former employees may contact the Department of Insurance if they believe the insurance company is not complying with state group continuation coverage rules. To contact the Department of Insurance call 1-800-686-1526.

What other agencies will provide information about the COBRA subsidy?

Information about the COBRA subsidy will also be available through the Department of Labor and the Department of Health and Human Services, which, along with the IRS, share responsibility for the COBRA requirements.

Visit the Department of Labor Web site at <http://www.dol.gov/ebsa/cobra.html> for information

related to COBRA eligibility and the subsidy. Benefits Advisors are also available to assist you at 1-866-444-3272.

Visit the IRS [COBRA Health Insurance Continuation Premium Subsidy](#).

Visit the IRS to find Information Related to Tax Provisions in the American Recovery and Reinvestment Act of 2009 at <http://www.irs.gov/newsroom/article/0,,id=204708,00.html>.

Visit the House Committee on Education and Labor fact sheet at <http://edlabor.house.gov/blog/2009/02/health-coverage-for-the-unempl.shtml>

Contact the Ohio Department of Insurance (<http://www.insurance.ohio.gov/>) for questions regarding the state continuation law at 1-800-686-1526.