



COBRA Subsidy Provisions Included in the Stimulus Act: What Steelworkers Need to Know

The American Recovery and Reinvestment Act of 2008 was signed into law by President Obama on February 17, 2008. The Act includes COBRA subsidies for individuals (and their eligible dependents) who lost their healthcare coverage due to a recent involuntary job loss. Many USW members who have suffered recent job losses will be able to take advantage of this subsidy. Therefore, we should make this information available to our laid off members and urge employers to get the required notices out as quickly as possible.

Eligibility

Effective February 17, 2009, the federal government will subsidize 65% of COBRA premiums for individuals (and their eligible dependents) who (1) are COBRA eligible due to involuntary job loss occurring between September 1, 2008 and December 31, 2009, (2) make less than \$125,000 per year (or \$250,000 per year for joint tax filers), and (3) pay 35% of the COBRA premium. Although eligibility for the subsidy reaches back to September 1, 2008, the subsidy itself is not retroactive; rather, the subsidy will be prospective for “periods of coverage” (generally months, e.g. March) beginning after February 17, 2009. The subsidy will last for up to nine months, but will end sooner if the individual becomes eligible for coverage under another group plan or Medicare, or the maximum COBRA continuation period expires. The Act also permits, but does not require, employers to allow eligible terminated employees to switch to coverage that costs less than the coverage they had before the job loss.

Notice

The Act requires employers to notify individuals who leave employment for any reason between September 1, 2008 and December 31, 2009 of the new COBRA rights. The notice must include information about the subsidy program and eligibility forms. Additionally, employers are required to give a second COBRA 60-day election period to individuals who are eligible for the subsidy but who did not elect COBRA before the enactment of the new law, or whose COBRA coverage terminated due to non-payment of premiums. Individuals who elect COBRA during this second election period will have coverage beginning no earlier than February 17, 2009, i.e. coverage will not be retroactive to the date of job loss.

Questions and Answers:

- Q1: I believe that I'm eligible for the subsidy. Will I receive a check from the federal government?
- A1: No, you will not receive a check from the federal government. Instead, the subsidy program requires your former employer to collect 35% of the COBRA premium from you, and then the employer will receive reimbursement for the remaining 65% of the premium from the federal government.
- Q2: I believe that I'm eligible for the subsidy. When will I receive my notice?
- A2: Although the COBRA subsidy became effective on February 17, 2009, employers are only required to send the new notice out within 60 days after enactment, i.e. by April 18. Further, the Department of Labor is not expected to provide guidance to employers regarding the content of the required notices until mid-March. Consequently, we anticipate that most employers will wait for DOL guidance before sending notice to terminated employees. In any event you will have up to 60 days following the date of the notice to make your election, with coverage effective retroactive to the first coverage period (e.g. March 1).
- Q3: If I elect COBRA, when will my coverage begin and when will the subsidy apply?
- A3: If you make a timely election within 60 days, your coverage will be retroactive to the first coverage period (generally March 1). However, employers have been given flexibility to charge the full 100% COBRA premium for up to two coverage periods (March and April) before they adjust the premium to the 35% level. If this happens, however, you will be entitled to either a reimbursement or future credit equal to 65% of those premium payments.
- Q4: How long will my subsidy last?
- A4: The Act provides a subsidy for up to nine months, but it may terminate earlier in the event that (a) you become eligible for Medicare or eligible for other group health coverage from a new employer or your spouse's employer, or (b) your COBRA period runs out, or (c) you fail to pay the required 35% premium.
- For example, assume that Joe lost his job on October 1, 2008 and did not elect COBRA at that time, but now makes a second election for COBRA, effective March 1, 2009. In this case, Joe will be able to receive COBRA until March 31, 2010 (18 months after his original COBRA eligibility date). His COBRA premium will be at 35% for nine months, through November 30, 2009, and at 100% thereafter.
- Q5: I was not eligible for COBRA when my employment terminated because my employer went out of business and terminated the health plan. Can I elect COBRA coverage now?

A5: No. The COBRA provisions of the Act do not allow you to enroll in COBRA now if you were not eligible for COBRA when your employment terminated. Only individuals who were eligible for COBRA upon termination of employment but who did not enroll in COBRA at that time will be entitled to a second election period.

Q6: I lost coverage due to involuntary layoff. I am currently eligible for coverage under my spouse's group healthcare plan, but I prefer to elect COBRA and claim the subsidy. Can I do this?

A6: In order to be eligible for the subsidy, you cannot be eligible for other coverage under another group healthcare plan. You are still permitted to elect COBRA instead of enrolling in your spouse's plan, but you will not be eligible for the subsidy and therefore will be required to pay 100% of the COBRA premium.

Furthermore, if you first elect COBRA and subsequently become eligible for other coverage that disqualifies you from continued receipt of the subsidy, you must notify your former employer, or risk having to refund the subsidy and pay a penalty.

Q7: My spouse's healthcare plan only provides limited dental and vision coverage. Does my eligibility for this limited coverage prevent me from receiving the subsidy?

A7: No. If your spouse's plan includes only limited coverage, such as dental, vision, EAP counseling or referral services, a flexible spending account (HSA or HRA), or any combination of these, you will not lose your subsidy.

Q8: My state has a "state continuation" or "mini-COBRA" law – does the subsidy apply to that law?

A8: Maybe. The "state continuation" or "mini-COBRA" laws that exist in some states require companies with fewer than 20 employees to continue to offer healthcare coverage to employees who lose their jobs; in some states, these laws mirror the federal COBRA law, but other states provide shorter periods of coverage and/or fewer benefits than the federal COBRA law. The subsidy will apply only to "state continuation" or "mini-COBRA" laws that are comparable to the federal COBRA law.