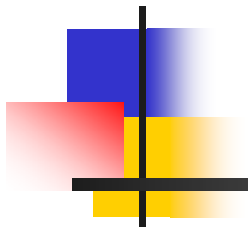


# COBRA and the American Recovery and Reinvestment Act of 2009



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# COBRA

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- Health insurance is one of the most important benefits an employer can provide their employees.
- Due to the critical importance of good health, and the escalating cost of medical treatment, employer sponsored group health insurance programs benefit employees, employers, and society.



# Purpose of COBRA

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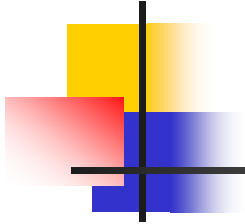
- Congress enacted continuation health care coverage requirements in Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, commonly referred to as "COBRA".
- The purpose of COBRA is to protect certain former employees and their dependents when they lose coverage under a group health plan.



# COBRA – Generally

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- Generally, COBRA requires certain employers provide employees, and dependents of employees, who lose coverage under a group health plan for various eligibility-related reasons the opportunity to elect to continue the group health coverage that would otherwise discontinue at termination.



# What is COBRA?



# What is COBRA?

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COBRA requires most employers to offer continued coverage under a group health plan to qualified individuals who lose coverage as a result of a “qualifying event”.

**Prior** to the enactment of the American Recovery and Reinvestment Act of 2009 (“Recovery Act”), the continued coverage was available solely on an employee self-pay basis.



# COBRA in a Nutshell....

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- The continuation of group health coverage.
- Before the Recovery Act, cost to “Qualified Beneficiaries” were generally charged 102% of the cost of a similarly situated participant, plus 2% for administrative cost (Note: can increase to 150% in certain situations).

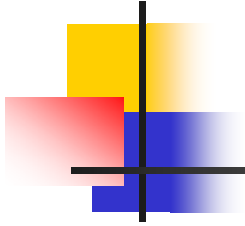


# Cost of COBRA

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- COBRA premiums may be increased if the costs to the plan increase but generally must be fixed in advance of each 12-month premium cycle.
- The plan must allow qualified beneficiaries to pay premiums on a monthly basis if they ask to do so, and the plan may allow them to make payments at other intervals (weekly or quarterly).





*Are you Subject to COBRA?*



# Plans Subject to COBRA

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Private employers with twenty (20) or more full time employees\* on 50% or more of the typical business days in the previous calendar year are generally required to offer COBRA coverage **and** to notify their employee(s) of the availability of COBRA coverage.



# Plans Subject to COBRA

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- Each part time employee counts as a fraction of an employee with the fraction equal to the number of hours that part time employee worked divided by the hours an employee must work to be considered full time.



# Plans Subject to COBRA

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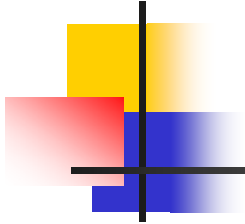
- **In summary if an employer:**
  - Offers a group health plan; and
  - Employs 20 or more people
- **The employer is subject to COBRA regulations.**



# Eligibility for COBRA

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- Continuation coverage is generally available to a “qualified beneficiaries” who would otherwise lose the group health coverage under the plan due to the occurrence of a “qualifying event.”
  - Who is/are a “qualified beneficiaries?”
  - What is a “qualifying event?”



# Who is/are “qualified beneficiaries?”



# Qualified Beneficiaries

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- Qualified Beneficiaries (QBs) usually refers to a person who is covered under the group health plan???
- the day before the qualifying event occurs.



# Qualified Beneficiaries

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- Who can be a Qualified Beneficiary?
  - A covered employee;
  - The spouse of a covered employee;
  - A dependent child of a covered employee;  
or
  - A child born to or placed for adoption with a covered employee during the period of continued COBRA coverage.

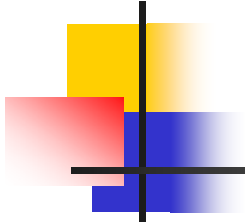




# Qualified Beneficiaries

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- Who else?
  - In certain cases, a retired employee, the retired employee's spouse, and the retired employee's dependent children may be qualified beneficiaries.
  - Agents, independent contractors, and directors who participate in the group health plan may also be qualified beneficiaries.



# What is a “Qualifying Event” under COBRA?



# Qualifying Event

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- Qualifying events are certain events that would cause an individual to lose health coverage.



# Qualifying Event

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- The type of qualifying event will determine who the qualified beneficiaries are and the amount of time that a plan must offer the health coverage to them under COBRA.
- A plan, at the plan's sole discretion, may provide longer periods of continuation coverage.



# Qualifying Event

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- Qualifying Events for Employees:
  - Voluntary or involuntary termination of employment for reasons other than gross misconduct;
  - Reduction in the number of hours of employment for the covered employee;



# Qualifying Event

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- Qualifying Events for Spouses:
  - Voluntary or involuntary termination of the covered employee's employment for any reason other than gross misconduct
  - Reduction in the hours worked by the covered employee
  - Covered employee's becoming entitled to Medicare
  - Divorce or legal separation of the covered employee
  - Death of the covered employee



# Qualifying Event

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- For Dependent Children:
  - Same as for Spouse, plus
    - Loss of dependent child status under the plan rules



# COBRA SUMMARY

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- Qualifying event + the Loss of Coverage  
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# What Now?

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- Following the loss of coverage due to a qualifying event, each qualified beneficiary *must* be offered the opportunity to elect the same group health plan coverage they were receiving the day before the qualifying event occurred.



# What coverage is continued?

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- Qualified Beneficiaries must be offered coverage identical to that available to similarly situated beneficiaries who are not receiving COBRA coverage under the plan.
- What does that mean?
  - Generally, the same coverage that the qualified beneficiary had immediately before qualifying for COBRA.



# What coverage is continued?

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- A modification in the benefits under the plan for active employees will also apply to qualified beneficiaries.
- Qualified beneficiaries must be allowed to make the same choices given to non-COBRA beneficiaries under the plan, such as during periods of open enrollment by the plan.



# COBRA CONTINUATION PERIOD

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- COBRA prescribes specific maximum periods for continuation coverage availability:

■ Qualifying Event	Maximum Continuation
■ Termination of employment	18 months
■ Reduction in work hours	18 months
■ Divorce or Legal Separation	36 months
■ Death of employee	36 months
■ Loss of dependent status	36 months
■ Medicare Entitlement	36 months
■ Social Security Disability	29 months



# New COBRA Obligations under the Recovery Act

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- The Recovery Act imposes new COBRA obligations, including:
  - temporarily subsidize COBRA premiums for certain employees;
  - offer “second chance” COBRA elections to certain employees;



# New COBRA Obligations under the Recovery Act

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- Continued:
  - update COBRA and HIPAA documents;
  - notify plan participants of their new COBRA rights; and
  - file new reports with the government.
- These changes affect every employer that sponsors a group health plan that has or will terminate or lay off a covered participant between September 1, 2008 and December 31, 2009.



# Subsidized COBRA Premiums

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- Under the Recovery Act, the “federal government” subsidizes up to 65% of the COBRA premium for up to 9 months.
- HOW?





# Subsidized COBRA Premiums

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- HOW?
  - Under the Recovery Act, Qualified Beneficiaries will be required to pay only 35% of their COBRA premiums after February 17, 2009.
  - Employers are required to ADVANCE 65% of the premium. The employer will recoup the premium through reduced federal payroll tax.



# Subsidized COBRA Premiums

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- If the credit amount is greater than the taxes due from the employer, the Secretary of the Treasury will directly reimburse the employer, insurer or plan for the excess.



# Who is eligible for the subsidy?

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- Individuals qualify under the Recovery Act if:
  - Are or were eligible for COBRA continuation coverage;
  - Lost coverage under the employer sponsored group health plan due to an involuntary termination between September 1, 2008 and December 31, 2009; and
  - Elect COBRA continuation coverage.



# Who is not eligible for the subsidy?

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- Those who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction.
- There is no premium reduction for premiums paid for periods of coverage prior to February 17, 2009.



# Who is not eligible for the subsidy?

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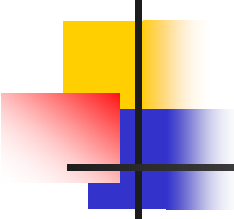
- If an individual's modified adjusted gross income for the tax year in which the premium assistance is received exceeds \$145,000 (or \$290,000 for joint filers), then the amount of the premium reduction during the tax year must be repaid.
- For taxpayers with adjusted gross income between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers), the amount of the premium reduction that must be repaid is reduced proportionately.



# Subsidized COBRA Premiums

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- The premium reduction for an eligible Qualified Beneficiary ends:
  - upon eligibility for other group coverage (or Medicare);
  - after 9 months of the reduction; or
  - when the maximum period of COBRA coverage ends, whichever occurs first.
- Individuals paying reduced COBRA premiums must inform their plans if they become eligible for coverage under another group health plan or Medicare.



# Special COBRA Election – second chance

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- Individuals involuntarily terminated from September 1, 2008 through February 16, 2009 who did not elect COBRA when it was first offered OR who did elect COBRA, but are no longer enrolled have a new election opportunity.



# Special COBRA Election – second chance

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- This election period begins on February 17, 2009 and ends 60 days after the plan provides the required notice.
- This special election period does not extend the period of COBRA continuation coverage beyond the original maximum period (generally 18 months from the employee's involuntary termination).
- COBRA coverage elected in this special election period begins with the first period of coverage beginning on or after February 17, 2009.





# What do you have to do?

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- Plan administrators **must** provide notice about the premium reduction to individuals who have a COBRA qualifying event during the period from September 1, 2008 through December 31, 2009.
- Plan administrators may provide notices separately or along with notices they provide following a COBRA qualifying event.
- This notice **must** go to all individuals, whether they have COBRA coverage or not, who had a qualifying event from September 1, 2008 through December 31, 2009.



# What do you have to do?

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- Individuals eligible for this special COBRA election period must also receive a notice informing them of this opportunity.
- This notice must be provided within 60 days following February 17, 2009 (*on or before April 18, 2009!*).



## What else?

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- The Recovery Act also allows companies to offer assistance eligible participants the choice to enroll in or change coverage to a lower cost coverage option.



# Model Notices

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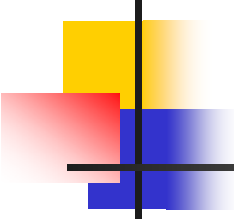
- The US Department of Labor issued model COBRA notices on or about March 17, 2009.
  - General Notice (full version)
  - General Notice (Abbreviated Version)
  - Alternative Notice



# General Notice (full version)

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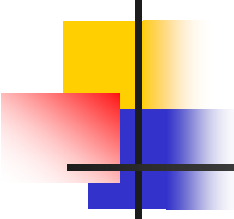
- Group health plans subject to the federal COBRA provisions must send the General Notice to all qualified beneficiaries, not just covered employees, who experienced a qualifying event at any time from Sept. 1, 2008 through Dec. 31, 2009, regardless of the type of qualifying event.
- The full version includes information on the premium reduction as well as information required in a COBRA election notice.



# General Notice (Abbreviated Version)

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- The abbreviated version of the General Notice includes the same information as the full version regarding the availability of the premium reduction and other rights under ARRA but does not include the COBRA coverage election information.



# General Notice (Abbreviated Version)

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- Therefore, the abbreviated version may be sent in lieu of the full version to individuals who:
  - experienced a qualifying event on or after Sept. 1, 2008;
  - have already elected COBRA coverage; and
  - who maintained COBRA coverage.



# Alternative Notice

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- Generally applicable to Insurance issuers.





# What should you do?

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- Develop a COBRA plan
  - HR, Tax, Legal, Accounting
- Identify Qualified Beneficiaries who are assistance eligible participants
- Determine which notice to issue
- Notify participants of the new COBRA rights before April 18, 2009!