

IRS and DOL Issue New Guidance Regarding COBRA Premium Subsidy

The IRS has released [Notice 2009-27](#), which provides guidance on the COBRA premium subsidy available to certain involuntarily terminated employees under the American Recovery and Reinvestment Act of 2009. The Notice consists primarily of a series of questions and answers intended to clarify areas of the subsidy program that had raised questions.

The Notice addresses what is perhaps the most frequently asked question about eligibility for the subsidy: What constitutes an involuntary termination? The Notice explains that for purposes of the COBRA subsidy only, an involuntary termination means “a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee’s implicit or explicit request, where the employee was willing and able to continue performing services. The Notice provides several examples that clarify what qualifies as an involuntary termination of employment.

Other topics covered by the Notice include:

- Who is an assistance eligible individual, including when the involuntary termination, loss of coverage and COBRA election must occur to make such individual subsidy-eligible;
- Calculation of the premium reduction, including the effect of employer-subsidized COBRA on that calculation;
- Coverage eligible for premium reduction, including when retiree health coverage can be treated as COBRA coverage, thereby preserving the retiree’s eligibility for the subsidy;
- When the premium reduction period begins and ends;
- Recapture of premium assistance;
- The extended election period;
- Payment to insurers; and
- Comparable state continuation coverage.

DOL Frequently Asked Questions

The DOL has updated its list of [Frequently Asked Questions](#) to include information about the model COBRA subsidy notices. Most notably, the FAQs have a series of examples that provide useful information about which model notice qualified beneficiaries should be receiving depending on the nature of the qualifying event and the timing of the distribution of the original notice and the election of coverage.

For further information about the COBRA premium subsidy, please join Ropes & Gray for a teleconference on Tuesday, April 7 at 12:30 EST. You can register [here](#). Finally, as always, feel free to contact a member of the Tax & Benefits Department or the Labor & Employment Department, or your usual Ropes & Gray attorney, for questions regarding the COBRA premium subsidy.

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