

Akerman Practice Update

EMPLOYEE BENEFITS

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IRS Releases Information to Help Employers Claim COBRA Coverage Credit on Payroll Tax Form

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Under the recently enacted American Recovery and Reinvestment Act of 2009, the Federal government will subsidize, for up to nine months, 65% of the COBRA premium for involuntarily terminated employees who are terminated between September 1, 2008 and December 31, 2009, as well as for their families who elect COBRA coverage under an employer-sponsored group health plan. Employers are responsible for delivering the 65% subsidy by reducing employee-paid COBRA premiums, and will be reimbursed through a refundable credit on their payroll tax return.

For general information regarding the COBRA subsidy, please see our previous Practice Update "COBRA Changes Included in Stimulus Act: Immediate Action Required". As noted in that Practice Update, many administrative questions were left unanswered in the language found in the bill itself. Certain questions related to the mechanics of claiming a credit have now been addressed.

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What New IRS COBRA Guidance is Available?

On February 26, 2009, the IRS released twenty detailed questions and answers that aim to help employers administer the COBRA continuation premium subsidy. In particular, the Q&As summarize the changes to the Form 941 (Employer's Quarterly Federal Tax Return). They also clarify that no additional information related to the COBRA subsidy is to be submitted with this tax form, although it does include the number of former employees receiving the COBRA subsidy, but that certain documentation must be maintained in the records of those employers claiming a credit against their payroll



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tax liability. The Q&As also indicate that additional forms may still need to be updated, and that all future revisions will appear on the www.IRS.gov website.

What Documentation Must Employers Maintain?

Employers must maintain supporting documentation for the credit claimed with respect to each former employee receiving the subsidy. This includes:

- Documentation of receipt of the former employee's 35 percent share of the premium.
- In the case of insured plans, a copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier.
- In the case of self-insured plans, proof of the premium amount and coverage provided to former employees.
- Attestation of each former employee's involuntary termination and the date on which it occurred.
- Proof of each former employee's eligibility for COBRA coverage and election of COBRA coverage.
- A record of the social security numbers of all former employees receiving the subsidy and the amount of the subsidy reimbursed with respect to each employee and their spouse and/or dependents.

What Form is Used to Claim a Credit Against Payroll Taxes?

In addition to addressing substantive revisions to Form 941 in the released questions and answers, the IRS also issued the 2009 Form 941. As mentioned, this has been revised to allow employers to claim the credit for the COBRA premiums they pay for their former employees. In short, after accounting for the total Federal payroll taxes, an offset is provided for “COBRA premium assistance payments” on line 12a and the number of COBRA electing individuals on line 12b. Note that the IRS has not extended the April 30, 2009 due date for the Form 941 for the first quarter of 2009.

You can access the questions and answers and the revised Form 941 and Instructions on the IRS web site at www.IRS.gov, and can also obtain additional information at www.dol.gov.

*If you have any questions about how to implement the COBRA subsidy with respect to your group health plan, please contact **Beth Alcalde** at (561) 653-5000, **Rick Hurt** or **Nadine Schaal** at (407) 423-4000, or **Peter Salomon** at (305) 374-5600.*

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