



## Benefits News and Views

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## Stimulus Bill Gives COBRA Subsidy to Involuntarily Terminated Employees

*Employees who are involuntarily terminated may be eligible to have 65% of their COBRA premiums subsidized under provisions of the Stimulus Bill (the American Recovery and Reinvestment Act of 2009) recently signed into law by President Obama. Though it is a federal subsidy, it is not paid directly to COBRA recipients, but rather to employers (or insurers or plans) through a reduction in payroll taxes, after former employees have paid for their COBRA coverage at the 35%-of-premium reduced rate. The subsidy is available beginning with the first period of coverage after the effective date of the law (February 17, 2009), thus in most cases with March coverage. Consequently, quick action is required on the part of employers, as new notices will need to be sent and adjustments to COBRA billing made.*

In order to be eligible for the subsidy, an individual must lose (or have lost) employment involuntarily between September 1, 2008 and December 31, 2009, and have been COBRA-eligible during that time. Family members also are eligible for subsidized coverage, but only if their COBRA eligibility was triggered by the involuntary termination of the former employee. Thus, family members who became COBRA-eligible through divorce, for example, are not eligible for the subsidy.

If the former employee had already elected COBRA, he or she will be eligible for the subsidy going forward. Terminated employees who had turned down the coverage must be given a new 60-day election period. The subsidy lasts for up to nine months, and will end before then if the individual becomes eligible for another group plan, or Medicare. The subsidy does not lengthen the period of COBRA coverage (thus, if an individual's COBRA runs out before December 31, 2009, the subsidy would not act to extend coverage for a longer period).

The subsidy is effective for the first period of coverage after the law's enactment, so in most cases this will be for March coverage. Since it is essentially impossible to modify COBRA billing so quickly, the law anticipates that those eligible for the subsidy may overpay their premium for the first two months, in which case they must then be refunded these "overcharges," or have them applied as a credit against future premiums.

The law limits eligibility for the full subsidy to individuals with an adjusted gross income below \$250,000 (joint filers)/\$125,000 (other filers), and it fully phases out at \$290,000/\$145,000. Employers do not need to make this income determination; individuals receiving the subsidy who aren't fully eligible for it must report receipt on their income tax return, and their tax liability will be adjusted accordingly. Alternatively, an individual can notify the employer that he or she is not eligible for the subsidy and pay the full COBRA premium.

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### Welcome to Our Newsletter!

This monthly newsletter is designed to give you timely and important information regarding employee benefits, government regulations, new products, and other areas of interest to employers and their employees. We value you, your employees, and your business and continue to strive to provide you with the very best products and service available.

Thank you again for your business.

## Wellness Program Investment Is Worth Every Dollar

**V**arious studies of the return on investment (ROI) generated by wellness and health promotion programs establish that these programs can indeed provide payback on the dollars invested in them. Regardless of the ultimate payback, however, an employer wishing to establish such programs still will need to find the financial resources to set them up—an investment that may be small or large, depending on the extent of the program. Given the added costs generated by employees with unhealthy lifestyles or modifiable health risks, it's worth exploring all possible ways to fund a wellness initiative.

Employees' unhealthy behaviors add greatly to a company's health care costs. Using tobacco, living a sedentary lifestyle, being overweight or obese, eating a diet lacking in nutrition, or failing to properly care for a controllable chronic health condition all can take a toll on a company's bottom line, as well as on an individual's health. According to data cited in a report from the Wisconsin Public Health & Health Policy Institute, illness and injury associated with an unhealthy lifestyle or modifiable risk factor can account for at least 25% of employee health care expenditures.

**According to data cited in a report from the Wisconsin Public Health & Health Policy Institute, illness and injury associated with an unhealthy lifestyle or modifiable risk factor can account for at least 25% of employee health care expenditures.**

This same report cites a handful of studies that support the proposition that wellness, health promotion and disease prevention programs provide “multifaceted payback on investment,” through improved worker health, reduced benefit expense and enhanced productivity. Studies cited reported ROI ranging from approximately \$1.50 to close to \$6.00 per dollar invested, varying by type of program and by whether health care costs alone, or also factors such as reduced absenteeism and improved productivity, were considered. Another study published in the *Journal of Occupational and Environmental Medicine* found that employers could save \$1.65 in health care costs for every dollar spent on a comprehensive employee wellness program.

If you accept that wellness programs will save you money over time, you still need to find the money to get such a program up and running. Try not to let funding concerns convince you to skimp on the quality of the program, as it takes a well-designed, targeted and comprehensive program to achieve the kind of ROI found in the studies. That said, consider these funding possibilities:

- Implement the wellness program at the same time that you make other health plan changes. If your benefit program does not include any high deductible health plan options (with lower premiums), now would be a good time to think about adding a consumer-driven plan to the mix.
- Make a health risk assessment part of the wellness program, charge a higher health plan premium rate for employees who decline to take the assessment, and apply these funds to wellness program costs.
- Ask your health plan vendors what wellness programs they offer and whether they are integrated with your current plan, or if they could be added to your plan at a discount.
- Survey employees to ascertain what types of programs they would use and, furthermore, would be willing to contribute to.



- Look at your benefits program overall for possible sources of funding. For example, are there little-used benefits that could be converted to a voluntary program? Or any high cost (for both employer and employees) health plan options that draw a low enrollment and, potentially, could be eliminated?

Employees with unhealthy lifestyles or modifiable health risks are likely to cost more to employ. It's worth taking the time and exploring all options to fund programs that target these employees' needs.

## Critical Illness Insurance Gives Employees a Financial Safety Net

*If you provide your employees with health, disability and life insurance coverages, they're receiving important protection against the financial burdens that can befall a family when an illness or injury strikes. Yet, these coverages alone may not be enough to prevent severe hardship, in the event that an illness or injury is extended or severe, requiring expenses beyond those covered by these other types of insurance.*

Critical illness insurance, offered to employees on a voluntary basis, is a no-cost way for employers to help employees affordably prepare for the range of expenses—medical and non-medical—that can accompany certain potentially life-altering medical conditions. Critical illness insurance is more important today than ever before, as individuals are living longer and consequently more likely to experience a heart attack, stroke or cancer. Plus, as treatments for severe medical conditions have improved and people are more likely to survive, a range of costs associated with recuperation have replaced funeral costs.

What exactly is critical illness insurance? Critical illness insurance is a type of insurance with benefits triggered by the diagnosis or onset of a medical condition specified in the policy. Though these will vary policy to policy, covered medical conditions can include cancer, heart attack, stroke, kidney failure, paralysis, the need for an organ transplant, or blindness or loss of hearing or speech.

The key feature to understand with critical illness insurance—and what distinguishes it from medical insurance—is that benefits are paid when the triggering event occurs, not when the insured individual incurs any expenses associated with the medical condition and seeks reimbursement for them, and these benefits can be used for whatever purpose the insured sees fit. So, for example, critical illness insurance benefits can be used to pay for: experimental treatments that would not be covered under a health insur-

ance policy; at-home care to assist with everyday activities, such as cooking and cleaning, for an individual recuperating at home from a heart attack; childcare to enable a stay-at-home spouse to spend time in the hospital with the insured; replacement wages to enable a working spouse to stay at home to care for the insured; renovations to adapt a home or auto to any disability brought about by the medical condition; or an extravagance, such as a family vacation following the insured's recovery.

Employees should see critical illness insurance as part of a sound financial plan: By providing a source of flexible income, it fills a gap that remains even if an individual has medical, life and disability coverage. Critical illness insurance is available in the individual market, but approximately three-quarters of these policies are sold in the worksite voluntary market, according to data from the Critical Illness Insurance Market Survey, co-sponsored by Gen Re LifeHealth and the National Association for Critical Illness Insurance. Advantages to buying the coverage in the group setting can include premium discounts, relaxed underwriting, and the convenience of readily learning about the product through worksite marketing and of paying premiums through payroll deduction.

As noted above, it costs an employer nothing to add critical illness insurance as a voluntary coverage, yet to do so can help an employer become more competitive in attracting and retaining the best employees.

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The subsidy is paid to the employer, insurer or plan, depending on the type of plan (self-insured, insured, multi-employer) through a reduction in payroll taxes. The entity receiving the subsidy will need to file a report substantiating payment of the subsidy (guidance from the Treasury Department on this is forthcoming).

The Act also allows employers to offer those eligible for the subsidy the choice of changing to a different health care option that is no more expensive than the coverage they had at the time of termination. This provision does not apply to flexible spending accounts or coverage such as dental or vision.

The law creates quite a "to do list" for employers. There are new notice requirements, because individuals who are eligible for the subsidy must be notified of this. Model notices are forthcoming, or employers may

modify their current COBRA notices or use a separate, supplemental notice. Failure to provide the proper notice is treated as a failure to meet the COBRA notice requirements. Adjustments will have to be made to COBRA billing procedures, so that former employees who are eligible for the subsidy receive adjusted payment notices. Furthermore, to recoup the subsidy employers will need to report on the subsidies provided, in order to receive a credit against payroll taxes.

Given that subsidized COBRA premiums will, in most cases, begin with the March premium, prompt action is required. Employers subject to COBRA (20 or more employees) should check with their benefits professional, and coordinate with their COBRA, health plan and payroll administrators, in order to be able to comply with these provisions in a timely manner.

# Benefits News and Views

## Today's Economy Calls for a 401(k) Plan Review

*A sputtering economy and declining stock market have been taking a huge toll on investors' portfolios, including employees' 401(k) accounts. According to Fidelity Investments' annual State of the 401(k) update, drops in the stock market resulted in the average workplace 401(k) account balance falling 27% in 2008. This drop occurred despite participant contribution levels that continued at slightly higher rates than in 2007.*

Such losses can be frightening to any investor, but are likely to be particularly so to employees. For many 401(k) participants, their plan account represents their largest single asset outside their home and a primary expected source of retirement income, but also their only experience in stock market investing. Such high stakes, coupled with fear and inexperience, can be fodder for lawsuits, as employees look to recover losses. Although ERISA Sec. 404(c) can protect plan fiduciaries from liability for the consequences of participants' investment decisions—if the provisions of that section are followed—fiduciaries continue to have the duty to act prudently and solely in the interest of plan participants when selecting the investment options offered by the plan and when selecting investment managers.

Furthermore, both investment offerings and investment managers must be monitored to ensure that they continue to be prudent choices. With the 2008 U.S. Supreme Court case of *LaRue v. DeWolff, Boberg & Associates* permitting a plan participant to sue plan fiduciaries to recover individual losses alleged to be caused by a breach of fiduciary duty, an increasing number of lawsuits may be forthcoming, to test the extent of the ruling in that case.

Clearly, present-day circumstances should provide ample motivation for 401(k) plan sponsors to take steps to make sure they have adequately protected themselves in the event of a lawsuit by a plan participant. Never was there a more important time to review the administrative processes and fiduciary procedures associated with your plan, including those related to investment managers, investment line-up, fees, etc. The following are among the issues to consider in conducting such a review:

- Investments. Review your plan's investment line-up to determine whether the selection available to par-

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ticipants is appropriate. Does the line-up offer choices along the risk and return spectrum to all ages of participants? Are any pre-mixed funds based on age or expected retirement date appropriate for your employee population? If the plan includes a default investment for participants who have failed to direct the investment of contributions, review this option to ensure that it continues to be an appropriate choice. If your plan currently does not have a written investment policy in place, or does not use an independent outside consultant to assist in selecting and monitoring investments, take steps to incorporate these into your investment procedures.

- Fees. Determine the amount of current participant fees associated with your plan's investments, and benchmark them against industry standards.
- Investment managers. Review—or create if you don't already have them—the written processes you have in place for the selection and monitoring of investment managers.
- Administrator. The plan administrator is the face of the plan to employees. Solicit and monitor participant feedback on the administrator so that you know of any problems before they grow into headaches for you, or worse. Further, have criteria in place to assess the plan administrator's performance on an ongoing basis and to benchmark performance against industry standards.
- Compliance. Are your plan's administrative procedures in compliance with current regulations? If you intend your plan to be a participant-directed individual account plan, are all the provisions of ERISA Sec. 404(c) being followed?
- Communications. With the market changing so much over the past year, and the effect this will have had on participant accounts, it's likely that communications that were appropriate during times of surging account values may not be so appropriate today. Revisit your plan communications materials and assess them accordingly. Saving for retirement remains vital to employees' future financial security, but different messages may be needed to convey this, given today's uncertain economy.

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### Questions?

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