



## Legal Alert: IRS Issues Guidance Addressing Questions Regarding the Application of the COBRA Subsidy

4/1/2009

On March 31, 2009, the Internal Revenue Service ("IRS") issued long-awaited guidance, Notice 2009-27, relating to the premium assistance for COBRA continuation coverage available under the American Recovery and Reinvestment Act of 2009 ("ARRA"). This guidance provides the background for the premium assistance and the extended election period for COBRA continuation coverage. But, more importantly, it provides answers to many of the commonly asked questions regarding:

- (1) What is an "involuntary termination"?
- (2) Who is an "Assistance Eligible Individual" ("AEI")?
- (3) How to calculate the premium reduction?
- (4) What coverage is eligible for premium reduction?
- (5) When does the premium reduction period begin?
- (6) When does the premium reduction period end?
- (7) How is the premium assistance recaptured for AEIs over the income limitation?
- (8) Who is eligible to participate in the extended election period?
- (9) What happens when AEIs make premium payments to insurers?
- (10) What is comparable state continuation coverage?

The IRS guidance can be found at:  
<http://www.irs.gov/pub/irs-drop/n-09-27.pdf>.

We previously distributed legal alerts discussing how ARRA impacts COBRA coverage, the means by which employers, where applicable, may claim the tax credit for COBRA subsidies paid under the Act, and the DOL model notices that must be sent to all Assistance Eligible Individuals. You can access these legal alerts via the following links:

<http://www.fordharrison.com/shownews.aspx?show=4526>,  
<http://www.fordharrison.com/shownews.aspx?show=4558>, and  
<http://www.fordharrison.com/shownews.aspx?Show=4628>.

**The Bottom Line:**

Employers and COBRA Administrators now have additional information to assist them in determining which individuals are eligible for the premium assistance, who should receive the DOL model notices, which must be sent by April 18, 2009, how the premium assistance is calculated, and which entity is entitled to take the credit against the payroll taxes. Should you have any questions, please contact the author of this legal alert, Tiffany Downs, [tdowns@fordharrison.com](mailto:tdowns@fordharrison.com), 404-888-3961, or any attorney in Ford & Harrison's Employee Benefits Practice Group.