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LEGAL ALERT



## Legal Alert: How Employers May Claim the Tax Credit for COBRA Subsidies Paid under the American Recovery and Reinvestment Act

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The Internal Revenue Service has released new guidance that will help employers claim credit for the COBRA subsidy that they pay for their former employees under the American Recovery and Reinvestment Act ("the Act"), passed February 17, 2009. The guidance, in question and answer form, and IRS Form 941 that employers must use to claim the new tax credit, may be found on the IRS web site, at <http://www.irs.gov/newsroom/article/0,,id=204708,00.html>. The IRS will continue to provide updated information through this web site as it becomes available.

As we explained in an earlier Legal Alert, the Act includes changes to the health benefit provisions of COBRA. Under the Act, certain individuals who are eligible for COBRA continuation health coverage, or similar coverage under state law, may receive a subsidy for 65% of the premium. These individuals are referred to as assistance eligible individuals ("AEIs").

The Act requires AEIs to pay only 35% of the applicable premium for up to nine months, or until they become eligible for Medicare or alternative group health insurance coverage, or until their COBRA coverage otherwise terminates, whichever occurs first. In many instances, it will be the employer who will have to pay the 65% premium difference, but (after receiving the employee's share of the premium) that employer may claim the subsidy payment as a credit on its quarterly employment tax return. Alternatively, the employer may claim the subsidy as an overpayment at the end of the quarter (or at the end of the year) and apply for reimbursement from the government.

IRS Form 941 has been revised for those employers who choose to claim the tax credit. In a nutshell, the revisions allow the employer to claim the credit on Line 12a of the form. Employers must list the number of individuals provided COBRA premium assistance on Line 12b. The due date for the first quarter 2009 Form 941 was not extended. Further instructions on how to complete the form may be found on the IRS' Web site at <http://www.irs.ustreas.gov/newsroom/article/0,,id=204708,00.html> and at <http://www.irs.ustreas.gov/pub/irs-pdf/f941.pdf>.

Employers claiming the tax credit also must maintain the following documentation (but it need not be furnished to the IRS, except on request):

- Information on the receipt (including dates and amounts) of the AEIs' 35% share of the premium.
- Supporting statements or invoices from the insurance carrier (if applicable) and proof of timely payment of the full premium to the carrier.
- Proof of the premium amount and coverage provided to the AEIs.
- Attestation of involuntary termination for the AEIs.
- Proof of the AEIs' eligibility for COBRA coverage at all relevant times, and their election of COBRA coverage.
- A record of the Social Security Numbers of all AEIs, and the amount of the subsidy reimbursed with respect to each AEI.
- Other documents necessary to verify the correct amount of reimbursement.

**The Bottom Line:**

Employers and plan administrators are advised to become familiar with the requirements of the Act, communicate with their third-party administrators, and promptly take steps to ensure that their plan documents and payroll systems comply with the Act.

If you have any questions regarding the issues addressed in this Legal Alert, please contact the author, Joelle Sharman, [jsharman@fordharrison.com](mailto:jsharman@fordharrison.com) or 404-888-3975 or any member of Ford & Harrison's Employee Benefits practice group.