

April 7, 2009

To: IBBP Employers

From: Chris Wehde

RE: COBRA Subsidy Examples

One of the issues that are discussed at length in the guidance is what is "involuntary termination". According to the IRS it includes not only a termination or layoff of the employee by the employer but also any voluntary termination if the termination is the result of:

A material negative change in employment; or the employer approaches the employee seeking him/her to voluntarily quit or retiree and if he/she doesn't, he/she will be laid off or terminated.

For example, if an employer reduces the employee's hours from 40 to 25 and he/she quits because of this reduction, it would constitute an "involuntary termination" under ARRA. Also, if the employer is going to fire the employee but gives him/her an opportunity to resign, this would constitute an "involuntary termination." Finally, if the employer is considering lay offs but first goes to individuals and offers them early retirement, this is potentially an "involuntary termination" as well.

Death, military leave, and disability/illness are not considered involuntary termination.

The following are examples illustrating how to implement the COBRA subsidy provisions based on guidance from the IRS and Department of Labor to date.

ASSISTANCE ELIGIBLE INDIVIDUALS

Example 1

Susan is terminated for poor performance on September 10, 2009 and loses health insurance coverage on October 1, 2008. Susan declines COBRA coverage.

Susan is considered an Assistance Eligible Individual because her involuntary termination and loss of coverage incurred between September 1, 2008 and December 31, 2009.

Example 2

Susan is laid off on August 15, 2008 but does not lose health insurance coverage until September 1, 2008.

Please call our office at 1-800-258-1415 if you have questions. Thank you

Susan is not an Assistance Eligible Individual because her involuntary termination occurred prior to September 1, 2008.

Example 3

On January 1, 2009 Susan's hours are reduced from 40 to 25. As a result Susan decides to terminate her employment with ABC Company.

Susan is an Assistance Eligible Individual because her voluntary termination was as a result of a "material negative change in employment" and therefore, is considered by the IRS to be an involuntary termination under ARRA.

Example 4

On January 1, 2009 Susan's hours are reduced from 40 to 25. As a result, Susan loses health coverage. Susan does not terminate her employment but continues to work at ABC Company.

Susan is not an Assistance Eligible Individual because the reduction in hours is not involuntary termination unless the employee terminates employment because of it or it's a reduction in hours to zero.

Example 5

On August 15, 2008 Susan is placed on layoff but her employment is not formally terminated. Susan loses health insurance coverage effective September 1, 2008. On January 1, 2009, her employer notifies her that they consider her terminated.

Susan is not an Assistance Eligible Individual. Although the qualifying event that resulted in her loss of coverage would be considered an "involuntary termination" it occurred prior to September 1, 2008.

Example 6

On December 15, 2009 Susan is laid off. Susan's health insurance coverage does not terminate until January 1, 2010.

Susan is not an Assistance Eligible Individual because the loss of coverage occurred after December 31, 2009.

Example 7

On November 1, 2009 Susan is laid off. As part of her severance package, her employer agrees to continue her coverage for two months through December 31, 2009. Effective January 1, 2010 Susan will be eligible to elect COBRA.

Susan is not an Assistance Eligible Individual because the loss in coverage doesn't occur until January 1, 2010.

