



The Vita Viewpoint Important Information for Decision Makers

IRS Guidance on COBRA Federal Subsidy

Overview

On April 4, 2009 the IRS issued a notice listing 58 frequently asked questions pertaining to the administration of the COBRA Federal Subsidy, along with the corresponding answers. The additional guidance confirmed Vita's interpretation of the federal subsidy. However, one important item from the notice offers further guidance for employers on how to determine if an employee had an involuntary and voluntary termination of employment.

What constitutes an involuntary termination of employment?

In the notice, the IRS defined an involuntary termination of employment as an employer's action to terminate employment where the employee was willing and able to continue performing services. The IRS specifically identified the following actions as involuntary terminations:

- Employer initiated action to terminate employment and health coverage due to the end of an employee's leave - This includes employees who choose not to return to work at the end of an FLMA leave
- Failure to renew a contract at the time the contract expires when the employee is willing and able to work
- Employee initiated termination due to an employer's action which causes a *material negative* change in the employment relationship with the employee - This includes an employer's action to reduce hours to zero and a subsequent loss of health coverage
- Involuntary reduction of hours to zero through a lay-off, furlough or suspension of employment which also results in a loss of health coverage
- Termination of employment for cause - However, an employee's termination due to gross misconduct may disqualify them for federal COBRA and the federal subsidy
- Termination of employment elected by the employee in return for a severance package or a "buy-out" where the employer indicates that after the offer period, a certain number of remaining employees will be terminated
- Resignation due to a *material change* in geographic location of employment for the employee
- An employer initiated lockout
- *Pending Final IRS Guidance:* Employee loss of coverage due to a military deployment

What does NOT constitute an involuntary termination of employment?

The IRS specifically noted that the following actions do NOT constitute an involuntary termination of employment:

- Reduction of hours (if not reduced to zero) even when health benefits are terminated
- Employee strike resulting in a work stoppage
- Death of an employee or dependent child loss of eligibility
- Employee who experiences an involuntary termination of employment and loss of group health coverage prior to September 1, 2008 or after December 31, 2009

Employer Action Item

For clients of Vita COBRA Administration, all COBRA Qualified Beneficiaries with Qualifying Events since September 1, 2008 have been notified of their eligibility or ineligibility for the federal subsidy and their right to appeal to the Department of Labor if necessary. Even with the new guidance, this notification has ensured that Vita clients are fully compliant with the federal subsidy notification deadline of April 18, 2009.

However, all employers should review prior involuntary and voluntary determinations and re-classify terminated employees based on the IRS's new guidance. ***Please notify Vita immediately of any COBRA Qualified Beneficiaries whose eligibility for the federal subsidy has changed from your initial determination.***