



Information Every Business Needs to Know

## HR & Benefits Advisor

January 2010

Brought to you by: **Law Offices of Travis Bowen, PC**

### In This Issue

[COBRA Subsidy Extended](#)  
[Drug-Free Workplace Mileage Rates for '10](#)  
[Health Care Reform Form 5500](#)

### Senate Passes Health Care Reform Bill



The Senate has passed a long-awaited health care reform bill, in an early-morning Christmas Eve vote.

The bill would require nearly every American to carry insurance; subsidies would be provided to help low-income people do so. Employers would be induced to cover their employees through a combination of tax credits

### Special Bulletin: 2010 COBRA Subsidy Extension

The President has signed the Fiscal Year [2010 Defense Appropriations Act](#), which extends the eligibility period for the COBRA premium reduction for an additional two months (through February 28, 2010) and the maximum period for receiving the subsidy for an additional six months (from nine to 15 months).

#### COBRA Subsidy Extension Changes

On Dec. 19, 2009, the 2010 defense appropriations bill extended the COBRA premium reduction eligibility period for two months through February 28, 2010, and increased the maximum period for receiving the subsidy for an additional 6 months (from 9 to 15 months).

Individuals who had exhausted the reduced premium period before the legislation extended it to 15 months will have an extension of their grace period to pay the reduced premium. To continue their coverage, they must pay the 35 percent of premium costs by February 17, 2010, or, if later, 30 days after notice of the extension is provided by their plan administrator.

Individuals who lost their subsidy and paid the full 100 percent premium in December 2009 should contact their plan administrator or employer sponsoring the plan to discuss a credit for future months of coverage or a reimbursement of the overpayment.

**Eligibility for the Premium Reduction:** The premium reduction for COBRA continuation coverage is available to "assistance eligible individuals".

An "assistance eligible individual" is the employee or a member of his/her family who:

- Has a qualifying event for continuation coverage under COBRA or a state law that provides comparable continuation coverage



and penalties.

The vote was 60-39, as 58 Democrats and two independents voted "yes," while Republicans unanimously voted "no." The House previously passed its own version in November. The Senate bill must now be merged with that legislation before the bill can become law.

(for example, so-called "mini-COBRA" laws) that is the employee's involuntary termination at any point from September 1, 2008 through February 28, 2010; and

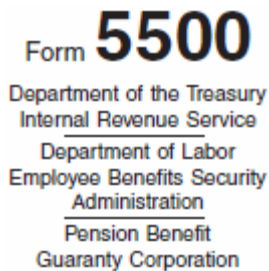
- Makes a timely election of COBRA coverage.

Those who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction. No premium reduction is available for premiums paid for periods of coverage that began before February 17, 2009.

Assistance eligible individuals who pay 35 percent of their COBRA premium are treated as having paid the full amount. The premium reduction (65 percent of the full premium) is reimbursable to the employer, insurer or health plan as a credit against certain employment taxes. For employer related COBRA subsidy administration, please [click here](#).

---

## Processing Form 5500



Beginning with plan years that start on or after Jan. 1, 2009, the U.S. Department of Labor will process Forms 5500 and 5500-SF exclusively through its Employee Retirement Income Security Act Filing Acceptance System (EFAST2).

The Department will not accept the paper versions of these forms, Annual Return/Report of Employee Benefit Plan, and Short Form Annual Return/Report of Small Benefit Plan, for plan years commencing on or after Jan. 1, 2009. EFAST2 is scheduled to be available beginning January 2010 on [www.efast.dol.gov](http://www.efast.dol.gov).

Other news on plan form filing from the DOL includes:

"One-participant" plans for

### About COBRA

COBRA gives workers and their families who lose their health benefits the right to purchase group health coverage provided by the plan under certain circumstances.

If the employer continues to offer a group health plan, the employee and his/her family can retain their group health coverage for up to 18 months by paying group rates. The COBRA premium may be higher than what the individual was paying while employed but generally the cost is lower than that for private, individual health insurance coverage.

The plan administrator must notify affected employees of their right to elect COBRA. The employee and his/her family each have 60 days to elect the COBRA coverage; otherwise, they lose all rights to COBRA benefits.

COBRA generally does not apply to plans sponsored by employers with fewer than 20 employees. Many States have similar requirements for insurance companies that provide coverage to small employers. The premium reduction is available for insurers covered by these State laws.

### Period of Coverage

The premium reduction applies to periods of coverage beginning on or after February 17, 2009. A period of coverage is a month or shorter period for which the plan charges a COBRA premium. The premium reduction for an individual ends upon eligibility for other group coverage (or Medicare), after 15 months of the reduction, or when the maximum period of COBRA coverage ends, whichever occurs first. Individuals paying reduced COBRA premiums must inform their plans if they become eligible for coverage under another group health plan or Medicare.

### Notice Requirements

ARRA, as amended, requires the provision of certain notices. Plan administrators need to provide information about the premium reduction to all individuals who have COBRA qualifying events from September 1, 2008 through February 28, 2010.

Plan administrators must also provide notice about the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act to

2009 and later plans will also have the option of filing Form 5500-SF electronically.

Schedule SSA (Form 5500), Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits, will become its own form and no longer be a schedule to Form 5500 series. It will become available for electronic filing during the 2010 plan year, with instructions to come in the next few months on filing 2009 plan year SSA data.

For 2009 plans, certain retirement plans that are maintained outside the U.S. for the primary benefit of nonresident aliens must file Form 5500-EZ instead of Form 5500.

More information on EFAST2, dates and filing requirements can be found at the Department of Labor's [EFAST2 page](#), or by calling the EFAST Help Line, 1-866-463-3278.

---

## U.S. Department of Labor Publishes Supplemental FAQs about the 2009 Form 5500

The U.S. Labor Department has published supplemental FAQs to Schedule C of the 2009 Form 5500 Annual Return/Report of Employee Benefit Plan. The FAQs are intended to provide guidance on questions from plans and service providers on requirements for reporting service provider fees and other kinds of compensation on the

individuals who have already been provided a COBRA election notice (unless the election notice included the updated premium reduction information).

- Individuals who are "assistance eligible individuals" must be provided this notice by February 17, 2010;
- Individuals who experience a termination of employment on or after October 31, 2009 and lose health coverage must be provided this notice within the normal timeframes for providing continuation coverage notices; and
- Individuals who are in a "transition period" (a period that begins immediately after the end of the 9 months of premium reduction under the previous ARRA limit, as long as those 9 months ended before December 19, 2009 and the premium reduction provisions of the 2010 DOD Act would apply due to the extension from 9 to 15 months) must be provided this notice within 60 days of the first day of the transition period.

The DOL is working on updating their model COBRA notices for download and should be finished by mid-January or earlier and will be available on HR & Benefits Essentials.

**Expedited Review of Denials of Premium Reduction:** Individuals who are denied treatment as assistance eligible individuals and thus are denied eligibility for the premium reduction (whether by their plan, employer or insurer) may request an expedited review of the denial by the U.S. Department of Labor. The Department must make a determination within 15 business days of receipt of a completed request for review. The official application form is available at [www.dol.gov/COBRA](http://www.dol.gov/COBRA) and can be filed online or submitted by fax or mail.

**Switching Benefit Options:** If an employer offers additional coverage options to active employees, the employer may (but is not required to) allow assistance eligible individuals to switch the coverage options they had when they became eligible for COBRA. To retain eligibility for the ARRA premium reduction, the different coverage must have the same or lower premiums as the individual's original coverage. The different coverage cannot be coverage that provides only dental, vision, a health flexible spending account, or coverage for treatment that is furnished in an on-site facility maintained by the employer.

**Income Limits:** If an individual's modified adjusted gross income for the tax year in which the premium assistance is received exceeds \$145,000 (\$290,000 for joint filers), then the amount of the premium reduction during the tax year must be repaid. For taxpayers with adjusted gross income between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers), the amount of the premium reduction that must be repaid is reduced proportionately. Individuals may permanently waive the right to premium reduction but may not later obtain the premium reduction if their adjusted gross incomes end up below the limits. If you think that your income may exceed the amounts above, consult your tax preparer or contact the IRS at [www.irs.gov](http://www.irs.gov).

For additional information, see:

- [Statement on COBRA subsidy extension](#)

Schedule. The [questions and answers are provided by the Department's Employee Benefits Security Administration.](#)

- [Fact Sheet on COBRA subsidy extension](#)
- [H. R. 3326-64 - COBRA Premium Reduction Provision](#)

---

## FAQs on Preventing Drugs in the Workplace

Do you have a drug or alcohol abuse problem in your workplace? Have you considered implementing a drug-free workplace program? Below are a few of the most frequently asked questions about preventing and dealing with drugs in the workplace.



### **Q. What exactly is a "drug-free workplace"?**

A drug-free workplace is a workplace without health, safety and productivity hazards caused by the abuse of drugs or alcohol by employees.

### **Q. What is a drug-free workplace program?**

A drug-free workplace program typically has five components:

1. A drug-free workplace policy
2. Supervisor training
3. Employee education
4. An Employee Assistance Program (EAP)
5. Drug testing

All five of these components are not necessary, but all are worth considering. The U.S. Department of Labor reports that the more components you include in your program, the more effective it may be. Of course, the nature and resources of your organization may guide the scope of your program.

### **Q. What limits or requirements are there for drug testing employees and applicants?**

Federal law largely grants employers discretion in the area of drug testing. Certain organizations in safety-sensitive transportation industries- aviation, trucking, railroads, mass transit, pipelines and other transportation industries- need to test their employees in accordance with U.S. Department of Transportation regulations.

Many states, however, have laws that govern how employers can implement drug testing, including the types of permissible laboratory testing and confirmation of positive test results. To see your state's laws regarding employee drug and alcohol testing, visit the HR & Benefits Essentials State Employment Laws Section or your state website.

### **Q. What is the Drug-Free Workplace Act of 1988?**

The Drug-Free Workplace Act of 1988 requires some federal contractors and all recipients of federal grants to commit to providing a drug-free workplace as a precondition to receiving a contract or grant from any federal agency. The Act does not require drug testing, but it does require employers to publish a policy statement, establish a

drug-free employee awareness program, and notify employees of the consequences of a criminal drug violation. Several states have their own drug-free workplace acts regarding state contracts.

**Q. Can I get my workers' compensation premiums reduced for implementing a drug-free workplace program?**

Although the federal government does not certify drug-free workplace programs, some states provide discounts in workers compensation premiums to employers that implement certified drug-free workplace programs. The maximum premium discount is typically around 5 percent. Please check with your state's worker's compensation department for more information.

**Q. Are there protections in place concerning discriminating against an employee with an addiction?**

Under specific circumstances, an employee with a history of alcoholism or drug addiction may be considered a qualified individual with a disability under the Americans with Disabilities Act (ADA) and other Federal non-discrimination statutes. For more information on discrimination and addiction, please [click here](#). Job Accommodation Network (JAN) also offers information about how the ADA affects employees with a history of [alcoholism](#) and [drug addiction](#).

\*For assistance in designing a drug-free workplace policy, you can use the U.S. Department of Labor's [Drug-Free Workplace Policy Builder](#).

---

## Optional Standard Mileage Rates for 2010

The IRS has issued the optional standard mileage rates for 2010 that taxpayers may use to deduct the costs of operating an automobile for medical, business, moving or charitable purposes.



For medical and moving purposes, the standard mileage rate has been reduced to 16.5 cents per mile in 2010 from 24 cents in 2009. For the costs of operating an automobile for business purposes, individuals may deduct 50 cents per mile in 2010. These decreased rates for 2010 are attributed to a general reduction in transportation costs.

The standard mileage rate for serving charitable organizations is 14 cents per mile. The rates are not mandatory, but only optional in place of calculating actual operating costs that individuals spend during these activities. The new mileage rates take effect Jan. 1, 2010. To view a copy of the IRS press release, [click here](#). The full rule is [available here](#).

---