



Information Every Business Needs to Know  
**HR & Benefits Advisor**  
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Brought to you by: The Law Offices of Travis Bowen, PC

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**COBRA Subsidy Recipients and Notifying Former Employers to Avoid Penalties**

Individuals who have qualified and received the 65 percent subsidy for COBRA health insurance, due to involuntary termination from a prior job, should notify their former employer if they become eligible for other group health coverage.

The American Recovery and Reinvestment Act of 2009 provides a subsidy of 65 percent of the COBRA health insurance premium for employees who are involuntarily terminated from September 30, 2008, to December 31, 2009. The subsidy requires only 35 percent of the premium to be paid for COBRA coverage for individuals, and their families, who have involuntarily lost their job and do not have coverage available elsewhere. The IRS announced the subsidy in a February 26, 2009, [information release, IR-2009-15](#).

If an individual becomes eligible for other group health

**Preparing For Disaster Can Lessen the Damage**

Are you prepared for a disaster? If your area or business is struck by a hurricane, flood or fire, your level of preparedness can make the difference between surviving and succumbing – both in a personal and in a business sense. To help you prepare, the federal government includes a variety of useful tips and ideas on their [Ready Business](#) website, part of the ready.gov emergency planning site.



**Write a Plan**

A written emergency plan can help everyone to understand what to do if disaster strikes. The plan should include details of how you will communicate with customers and with employees during and after the occurrence. Involving employees in creating the plan will accomplish two goals: employees who contribute to the effort may be more likely to support it and remember what to do, and the plan itself will benefit from the input of front-line employees. They may be in the best position to say what will be needed and how to accomplish it.

When creating your written plan, don't overlook any special needs employees. Engage them in the process, and ask them what they may need. For example, employees who are unable to walk will need help evacuating, and those who are hearing-impaired will require visual warnings.

**Communication is Critical**

Communication is one of the most important needs following an emergency. Employees need to know when and how to contact you. For instance:

- Set up a telephone call tree;
- Create a password-protected page on the company website;
- Use an email alert system;
- Set up a call-in voice recording;
- Establish an out-of-town phone number where employees

coverage, they should notify their plan in writing that they are no longer eligible for the COBRA subsidy. The notice that the United States Department of Labor sent to the individual advising them of their right to subsidized COBRA continuation payments includes the form individuals should use to notify the plan that they are eligible for other group health plan coverage or Medicare.

If an individual continues to receive the subsidy after they are eligible for other group health coverage, such as coverage from a new job or Medicare eligibility, the individual may be subject to the new IRC § 6720C penalty of 110 percent of the subsidy provided after they became eligible for the new coverage.

Taxpayers who fail to notify their plan that they are no longer eligible for the COBRA subsidy may wish to self-report that they are subject to the penalty by calling the IRS toll-free at 800-829-1040. In addition, taxpayers will need to notify their plan that they are no longer eligible for the COBRA premium subsidy.

Anyone who suspects that someone may be receiving the subsidy after they become eligible for group coverage or Medicare may report this to the IRS by completing [Form 3949-A, Information Referral](#) (PDF).

#### References/Related Topics

[COBRA Health Insurance Continuation Premium Subsidy](#)

**USCIS: Expiration Date of Employment Eligibility Verification Form I-9 Extended to Aug. 31, 2012**

can leave a message letting you know that they are okay, in case the disaster is far-reaching.

Include the phone number, website address, and other pertinent emergency information on a wallet card employees can carry with them.

#### Who's In Charge?

Employees need to know who is providing accurate information following an emergency. Designate staff members who will have that responsibility, and make sure employees know who they are. Top company executives should have all relevant information about employees, customers and vendors.

#### Let Them Know

Once you have created an emergency preparedness plan, make sure employees know about it. Use your company newsletter or website (or both) to remind them about it often. Of course, employees will want to make sure their own families are safe, and the ready.gov site offers a [Family Emergency Plan](#) that can help. By including that information in your emergency preparedness communications, employees will know you care about them and about their families.

#### Getting Back to Normal

Once the disaster has passed, it is important to the well-being of you and your employees to resume routines as quickly as you can. By preparing in advance, you have likely made that easier. Ready.gov suggests that you take some measures to help employees in the aftermath of an emergency:

- Encourage adequate food, rest and recreation;
- Provide for time at home to care for family needs;
- Have an open door policy that facilitates seeking needed care;
- Create opportunities for employees to talk about the experience;
- Alleviate fears about family needs by assuring employees you haven't forgotten them;
- Provide professional counselors; and
- Limit exposure to television, radio and other external stressors once the need for emergency instructions has passed.

Be sure you don't neglect yourself, either. Leaders tend to experience additional stress after a disaster, and your personal health is important to both your business and your family.

For additional information, please click here [www.ready.gov/business](http://www.ready.gov/business)

## Immediate Termination: Let Cooler Heads Prevail

When an employee is guilty of serious misconduct, an





**U.S. Citizenship and Immigration Services** (USCIS) announced that the Office of Management and Budget has extended its approval of [Form I-9](#) (Employment Eligibility Verification) to Aug. 31, 2012. Consequently, USCIS has amended the form to reflect a new revision date of Aug. 7, 2009.

Employers may use the Form I-9 with the revision date of either Aug. 7, 2009 or Feb. 2, 2009. The revision dates are located on the bottom right-hand portion of the form.

For more information on USCIS and its programs, or to obtain Form I-9 and the Handbook for Employers, see the corresponding link to the right under "Related Links." Employers who do not have computer access can order the Form I-9 by calling our toll-free forms line at (800) 870-3676.

USCIS forms and information on immigration laws, regulations, and procedures can also be requested by calling the National Customer Service Center toll-free at (800) 375-5283.

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**The Twenty Most Important Federal HR-Related Laws**



1. [Age Discrimination in Employment Act](#)



employer's natural reaction is often anger and disappointment. In smaller businesses particularly, where there is some sense of "family" or "community," there is often a sense of betrayal and disloyalty. Often the employer's initial response is to discharge the employee. As an employer, you may feel justified in immediately terminating the offending employee. You may even be justified. But should you make the decision to discharge in the heat of the moment? Not according to employment law experts. The experts say you need to keep your emotions in check, and follow your established discipline and discharge procedures, which should be clearly defined in written policies and communicated to your staff. Please note, this is a sensitive and complex area. Employers are strongly encouraged to consult with experienced counsel on these matters before taking action.

### **Be Sure to Investigate**

Even if the evidence against the employee appears overwhelming, you should still investigate the matter in a businesslike manner. Clearly advise the employee regarding the allegations of wrongdoing. Then, allow the employee to provide his or her explanation of the events. If the employee's continued presence in the workplace threatens the well-being of your business, e.g., the employee is charged with theft, fighting, other violence, you may wish to suspend the employee subject to discharge and direct the employee to leave the premises. If the employee is exonerated, then the employee should be paid for the suspension period. If the employee is discharged he or she will not be paid for the suspension period.

Continue your investigation by collecting any physical evidence available, such as stolen property, drugs, alcohol, weapons, or other contraband. Interview all eyewitnesses and anyone else who may have information regarding the matter. Document your investigation in the offending employee's personnel file.

### **Evaluate Your Company's History with Similar Infractions**

If the investigation clearly shows that the accused employee is guilty of the infraction alleged, determine whether employees who committed similar offenses in the past have been discharged or whether some lesser penalty was imposed. Even if you have discharged employees for the same infraction in the past, consider whether there are other factors that might mitigate the discharge, as discharge is the "capital punishment" of the workplace. Consider the employee's long term work record, whether the employee is under any particular personal stress that might be relevant, etc.

### **Limit Your Exposure to Discrimination Charges**

Before making your final decision, consider whether the employee is in a "protected class" which might give the employee some basis for asserting a claim of discrimination based upon race, gender, age, religion, national origin, union activity, etc. Even though you may work hard to avoid discriminatory activity in your business, a manager, fellow employee, or someone else may have done something that could suggest discrimination. On the one hand, you do not want to be intimidated by threats of baseless claims and suits alleging discrimination. On the other hand, you must make an informed business decision as to whether there is any reasonable basis for a claim that the employee might seek to assert. Offending employees, of course, rarely recognize their own wrongdoing and often seek to blame someone else for their acts or omissions.

- (ADEA)
2. [Americans With Disabilities Act of 1990](#) (ADA)
  3. [Consolidated Omnibus Budget Reconciliation Act](#) (COBRA)
  4. [Employee Polygraph Protection Act](#) (EPPA)
  5. [Employee Retirement Income Security Act](#) (ERISA)
  6. [Equal Pay Act](#) (EPA)
  7. [Fair Credit Reporting Act](#) (FCRA)
  8. [Fair Labor Standards Act](#) (FLSA)
  9. [Family and Medical Leave Act](#) (FMLA)
  10. [The Immigration Reform and Control Act of 1986](#) (IRCA)
  11. [National Labor Relations Act](#) (NLRA)
  12. [The Occupational Safety and Health Act](#) (OSH Act)
  13. [Older Workers Benefit Protection Act](#) (OWBPA)
  14. [Personal Responsibility and Work Opportunity Reconciliation Act](#) (PRWORA)
  15. [Pregnancy Discrimination Act](#) (PDA)
  16. [The Sarbanes-Oxley Act of 2002](#) (SOX)
  17. [Civil Rights Act of 1866](#) (Section 1981)
  18. [Title VII of the Civil Rights Act of 1964](#) (Title VII)
  19. [Uniformed Services Employment and Reemployment Rights Act](#) (USERRA)
  20. [Worker Adjustment and Retraining Notification Act](#) (WARN)

In determining whether there is any risk of a discrimination claim, look at the employee's personnel file, interview the employee's supervisor, and explore any other evidence available.

### Examine Your Business-Wide Practices

You should also look carefully at your business-wide practices. Is there any neutral practice, e.g., a pen and paper test, educational requirements, etc., which might have a disparate impact on a protected group of employees? Also, consider whether you are at risk for any claims for unequal pay for men and women, failure to pay overtime pay, etc. Disgruntled employees may seek to dig something up that is companywide and not unique to them in order to retaliate for the discharge. If you think there is any risk of exposure, you should consult with a labor and employment attorney to review your documentation and determine your next steps.

### Weigh Your Decision Carefully

In the end, you may decide that termination is warranted. When employees are guilty of workplace violence, theft, drug use, bringing weapons to work, and other acts that threaten the wellbeing of your workplace and other employees, the only effective solution may be to remove the employee from the workplace. However, firing first and asking questions later may create far more problems than it solves. While you may feel vindicated in the short term, in the long term you may have a lot to lose. Even in cases where company work rules clearly allow immediate dismissal in the event of a specific infraction, discipline and/or discharge should only be imposed after a careful investigation and consideration of all the circumstances.

### If the Employee is Innocent

If you find that the employee is innocent of the infraction, the employee should be returned to the workforce as quickly as possible, and paid for the time missed. In the event of complete exoneration, all references to a disciplinary action should be removed from personnel files.

By following a dispassionate course even when you really want to discharge an offending employee, by taking the extra time to reconsider and investigate, you ensure fair treatment for your employees and, in the long run, you avoid costly mistakes.

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### Employee vs. Independent Contractor – Ten Tips for Business Owners

If you are a small business owner, whether you hire people as independent contractors or as employees will impact how much taxes you pay and the amount of taxes you withhold from their paychecks. Additionally, it will affect how much additional cost your business must bear, what documents and information they must provide to you, and what tax documents you must give to them.

The following are the top ten tips every business owner should know about hiring people as independent contractors versus hiring them as employees.

1. Three characteristics are used by the IRS to determine the relationship between businesses and workers: Behavioral Control, Financial Control, and the Type of Relationship.

2. Behavioral Control covers facts that show whether the business has a right to direct or control how the work is done through instructions, training or other means.
  3. Financial Control covers facts that show whether the business has a right to direct or control the financial and business aspects of the worker's job.
  4. The Type of Relationship factor relates to how the workers and the business owner perceive their relationship.
  5. If you have the right to control or direct not only what is to be done, but also how it is to be done, then your workers are most likely employees.
  6. If you can direct or control only the result of the work done -- and not the means and methods of accomplishing the result -- then your workers are probably independent contractors.
  7. Employers who misclassify workers as independent contractors can end up with substantial tax bills. Additionally, they can face penalties for failing to pay employment taxes and for failing to file required tax forms.
  8. Workers can avoid higher tax bills and lost benefits if they know their proper status.
  9. Both employers and workers can ask the IRS to make a determination on whether a specific individual is an independent contractor or an employee by filing a [Form SS-8](#) – Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding – with the IRS.
  10. You can learn more about the critical determination of a worker's status as an Independent Contractor or Employee at IRS.gov by selecting the Small Business link. Additional resources include IRS [Publication 15-A](#), Employer's Supplemental Tax Guide, [Publication 1779](#), Independent Contractor or Employee, and [Publication 1976](#), Do You Qualify for Relief under Section 530? These publications and [Form SS-8](#) are available on the IRS Web site or by calling the IRS at 800-829-3676 (800-TAX-FORM).
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