

## ***COBRA Premium Subsidy —UPDATE***

The *American Recovery and Reinvestment Act of 2009*, popularly known as the federal stimulus law, contained a historic provision designed to make it more affordable for laid-off employees who are involuntarily terminated to continue their health insurance coverage under COBRA. This Briefing Bulletin, which is an update to NYSUT Briefing Bulletin Number 09-06 *COBRA Subsidy Included in Stimulus to Help Laid-Off Workers Keep Health Insurance*, provides answers to some of the latest questions surrounding this new provision of the stimulus law.

### ***What is the COBRA subsidy included in the federal stimulus?***

The federal stimulus law provides a 65% subsidy for up to 9 months of COBRA. In order to qualify for the 65% COBRA subsidy an individual must meet all of the following requirements:

- ▶ Be involuntarily terminated and eligible for COBRA continuation coverage at any time during the period beginning September 1, 2008 and ending December 31, 2009;
- ▶ Elect COBRA coverage when first offered or during the additional election period;
- ▶ Not be eligible for other group health coverage, such as a spouse's plan or Medicare; and

- ▶ Have an annual income less than \$125,000 for a single or \$250,000 for a joint return in any year in which the subsidy is received. The 65% subsidy is reduced for those with incomes up to \$145,000 for a single and \$290,000 for a joint return.

### ***What constitutes an involuntary termination?***

An involuntary termination is defined as severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than the employee's implicit or explicit request, where the employee was willing and able to continue performing services.

*What are some examples of an involuntary termination?*

The determination of whether the termination was involuntary depends on all the facts and circumstances. The following are examples of an involuntary termination:

- A voluntary termination, resignation or retirement if the facts and circumstances indicate that absent such voluntary termination, the employer would have terminated the employee's services, and that the employee had knowledge that the employee would be involuntarily terminated.
- The employer's failure to renew a contract at the time the contract expires if the employee was willing and able to execute a new contract providing terms and conditions similar to those in the expiring contract and to continue providing the services.
- An employee initiated termination from employment for good reason due to an employer action that causes a material negative change in the employment relationship for the employee.
- A lay-off, furlough or other suspension of employment with an involuntary reduction in hours to zero resulting in a loss of health coverage. This includes lay-off periods with a right to recall or a temporary furlough.
- An employer's action to end an individual's employment when the individual is absent from work due to illness or disability.
- Termination for cause however, for purposes of Federal COBRA if the termination of employment is due to the gross misconduct of the employee, the termination is not a qualifying event and

the employee and family members losing coverage by reason of the employee's termination of employment are not eligible for COBRA.

- A resignation as a result of a material change in the geographic location of employment for the employee
- Termination elected by the employee in return for a severance package (a "buy-out") where the employer indicates that after the offer period for the severance package, a certain number of remaining employees in the employer's group will be terminated.

*Does an involuntary termination include a reduction in hours?*

Generally, no. If the reduction in hours is not a reduction to zero it is not an involuntary termination even if health insurance is lost. However, an employee's voluntary termination in response to an employer-imposed reduction in hours may be an involuntary termination if the reduction in hours is a material negative change in the employment relationship for the employee.

*If the involuntary termination occurs prior to December 31, 2009, but the loss of coverage resulting in eligibility for COBRA continuation occurs after December 31, 2009, is the individual eligible for the COBRA subsidy?*

No. Both the involuntary termination and the eligibility for COBRA continuation must occur during the period September 1, 2008 through December 31, 2009.

More information about the COBRA premium subsidy is available at the United States Department of Labor at [www.dol.gov](http://www.dol.gov)