

# MorrisonCohen<sub>LLP</sub>

## CLIENT UPDATE

### Extended COBRA Eligibility Notices Required For Employers to Capture Special 65% Subsidy

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The American Recovery and Reinvestment Act of 2009 enacted in February created a subsidy for COBRA premiums for individuals who were involuntarily terminated from employment between September 1, 2008 and December 31, 2009. The subsidy equals 65% of an individual's COBRA premiums, and is paid by the employer (but is reimbursed by the federal government, as noted below). The remaining 35% continues to be paid by the terminated individual. The subsidy applies only to COBRA premiums paid on or after February 17, 2009, and is available for up to nine months.

Employers are required to provide notice about the subsidy to all eligible individuals. Dependents of a covered individual who were receiving insurance immediately prior to the involuntary termination are also eligible for the notice and the subsidy. Employees who were involuntarily terminated between September 1, 2008 and February 17, 2009 and previously declined COBRA coverage were entitled to notice by April 17, 2009. Failure to provide proper notice, including to previously terminated employees, will result in the imposition of COBRA's general excise taxes on employers (generally \$100 per day per eligible individual with certain limits).

If a terminated employee's adjusted gross income (as modified by the stimulus law) for the termination year exceeds \$125,000 (\$250,000 in the case of a joint return), he or she will be required to include a portion of the employer subsidy into income. Full inclusion is required where income exceeds \$145,000 (\$290,000 in the case of a joint return).

An employer is permitted to reduce its payroll tax liability to obtain reimbursement for the 65% of the COBRA premiums paid by it.

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If you have any questions relating to this notice please contact your primary attorney at Morrison Cohen LLP or any of the following:

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