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### **COBRA Premium Subsidy Answers for Employers: Taxability and Recapture**

Under the American Recovery and Reinvestment Act of 2009 (ARRA), certain individuals who are eligible for COBRA continuation health coverage, or similar coverage under state law, may receive a subsidy for 65 percent of the premium. These individuals are required to pay only 35 percent of the premium. Employers may recover the subsidy provided to assistance-eligible individuals by taking the subsidy amount as a credit on their quarterly employment tax return. The employer may provide the subsidy – and take the credit on its employment tax return – only after it has received the 35 percent premium payment from the individual.

The following questions and answers reflect guidance from the Internal Revenue Service regarding taxability and recapture of the COBRA premium subsidy.

#### **Will the COBRA premium subsidy be taxable income for the individual?**

The premium subsidy is not included in the individual's income. However, there is a phase-out of eligibility for the subsidy, which will increase some high-income individuals' tax liability if they receive the subsidy. The phase-out impacts individuals whose modified adjusted gross income exceeds \$125,000 (\$250,000 for those filing joint returns.) Tax liability is increased, to achieve repayment of a portion of the subsidy, for those taxpayers whose modified adjusted gross income is between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for those filing joint returns.) If a taxpayer's modified adjusted gross income exceeds \$145,000 (\$290,000 for those filing jointly), the full amount of the subsidy must be repaid as an additional tax.

There is no additional tax for individuals with modified adjusted gross income less than these income levels.

#### **Is the 65% subsidy subject to state income tax?**

The premium subsidy is not included in income for federal tax purposes. However, its treatment for state income tax purposes is determined under state law and depends on the tax law of that particular state.

*Source: IRS*

#### **Healthy Workforce Act of 2009**

A bill that would provide a tax credit to companies offering "effective and comprehensive wellness programs" is likely to survive and be a part of what is produced from the healthcare reform debate, as it is currently receiving bipartisan support. The Healthy Workforce Act would amend the Internal Revenue Code (IRC) to provide a credit for the costs employers would incur in implementing such wellness programs for their employees.

The bill provides an annual credit for employees participating in wellness programs of \$200 per employee for the first 200 employees and \$100 per year for additional employees. To claim the credit, workplace wellness programs will need to consist of any

of the three following wellness components:

- 1) Health Awareness Component
  - a. Health education
  - b. Health screenings
- 2) Employee Engagement Component
  - a. Workplace wellness committee
  - b. Employee participation tracking
3. Behavior Change Component – encouraging healthy living through counseling, seminars, online programs, or self-help materials
4. Supportive Environment Component – including on-site policies promoting health and wellness, participation incentives, and the opportunity for employees to give input into the workplace wellness program.

The importance of workplace wellness is one area where business and labor agree.

## H1N1 Virus Highlights Need for Communicable Disease Policy

On June 11, 2009, the World Health Organization (WHO) raised the worldwide pandemic alert level to Phase 6 in response to the ongoing global spread of the novel influenza A (H1N1) virus. A Phase 6 designation indicates that a global pandemic is underway.

The spread of the H1N1 virus in your workplace is a real threat. Are you prepared? As an employer, you are responsible for providing and ensuring a healthy working environment for your employees.

At the very least, you need a workplace communicable disease policy requiring employees to notify the company of any possible exposure to certain diseases. This will allow you to take proactive preventive measures against the spread of the disease. Since medical disclosures are governed by the Americans with Disabilities Act (ADA), you must ensure that the policy meets the requirements of the ADA. Employers should also ensure that employee health information is kept confidential as required by HIPAA. As part of your communicable disease policy, employees may have reduced working hours, work from a remote location and/or be removed from nonessential job duties until they are no longer contagious.

### Other Considerations:

#### *Travel and Quarantine Policies*

Employee travel must comply with all advisories from the CDC and U.S. Department of State. As a result, those who are traveling to areas with current communicable disease outbreaks must obtain all recommended vaccinations and follow all health recommendations.

If an employee travels to a region of the world for which he/she must be quarantined upon arrival back to the U.S., he/she should notify the employer immediately to arrange for telecommuting or paid leave.

### *Leave Policies*

Social distancing may be of the highest importance when trying to prevent the spread of a communicable disease in the workplace. Employees may be subject to quarantine, could be ill and need to stay home, or may be home caring for sick relatives. As a result, these individuals should remain away from the workplace to reduce the likelihood of infecting others.

Beyond this, other employees may fear that they will come in contact with a disease while being in the workplace, and consequently refuse to come to work. In response, companies may wish to devise policies to address these concerns and leave issues. Contact your LDP Consulting Group broker for more information on communicable disease policies, as well as a sample policy.

## Benefit Costs – New Ways to Save

Looking for some ways to save on your benefit plan costs? Try these ideas:

- Offer voluntary benefits as a way to help employees, even though your budget may be tight. Since group rates are often less expensive than individual policy coverage, this may be just the ticket for employees who want specialized coverage.
- Offer a high-deductible health plan (HDHP) in conjunction with a wellness program. Make the incentives of the program link with the health plan, and encourage those with chronic conditions to participate in wellness initiatives.
- Make your employees more accountable for their work performance by assessing what drives them and then focus on improvement with incentives focusing on those drivers.
- Show your employees how much healthcare costs you by providing information about how much you pay. Cost transparency can lead to employees making smarter, more economical decisions about their health.
- Show your employees that you care about their health and well-being. This will spur engagement (which may increase your profits), and may also encourage employees to get healthier because you are concerned.
- Upper management should get health assessments and screenings first to show other employees how important preventive care is in reducing costs. Also, challenging your employees to be healthier may inspire them to take you up on the offer!
- Encourage your employees to use generic medications versus brand. Also promote low-cost health screenings, fairs and on-site clinic care.

**Please contact your LDP representative for more information.**