HOUSTON CHRONICLE

# Cutting through the COBRA confusion

**By L.M. SIXEL**

**June 9, 2009**

It's bad enough to lose your job. But it's a double whammy when you lose your health insurance, too. Two decades ago, Congress began requiring companies to allow their former employees to stay on the group health insurance plan for 18 months (more if the employee is totally disabled or if the employee dies and leaves dependent children) as long as they paid the full cost of coverage plus a small administrative fee.

However, not many employees took advantage of COBRA — which was named after a consolidated budget bill — because they couldn't afford the premiums. That changed when the federal government's new stimulus bill included a COBRA subsidy. The federal government will pay 65 percent of the premiums for up to nine months.

For some former employees, the subsidy means the insurance is even cheaper than it was when they were still working. The new COBRA rules are confusing. We try to answer the most common questions.

**Q: Who is qualified for the COBRA subsidy?**

You must have involuntarily lost your job between Sept. 1, 2008, and Dec. 31, 2009, according to the Department of Labor. To get the full amount, your annual income can't exceed $125,000 (or $250,000 for a joint tax filers).

**Q:I got fired because I got caught stealing from the cash register. Am I still eligible for COBRA?**

Probably not. Employers don't have to offer COBRA to an employee it discharges for gross misconduct. And stealing is typically considered gross misconduct, said Jesse Gelsomini, an employment lawyer who specializes in employee benefits at Haynes and Boone in Houston.

But other bad deeds are not always so clear-cut, Gelsomini said, adding that he typically recommends to his clients that they just offer COBRA to their ex-employees to avoid litigation.

**Q: How do I apply for the subsidized COBRA benefits?**

You apply through your former employer, said Peter Sullivan, president of Encompass Benefits & Wellness Management in Houston.

You pay 35 percent of the total cost. The company initially kicks in the remaining 65 percent, which it gets back when it later settles its payroll tax bill with the federal government.

If you have lost your job and haven't heard anything yet, give the human resources office a call. Employees who lost their jobs on or after Sept. 1 but before the subsidy went into effect in February have a second chance to apply for COBRA benefits.

**Q: What happens if my company cancels its health insurance plan? Can I still get COBRA?**

As a general rule, no. COBRA is only available if the group plan still exists.

However, there are some exceptions. Even if a company cancels its health insurance but one of its affiliates such as a subsidiary keeps its plan, then ex-employees can piggyback onto that insurance, said Dorene Cohen, an employee benefits lawyer at Vinson & Elkins in Houston.

**Q:How do employers get reimbursed for fronting the COBRA subsidy? It can be quite a big squeeze on cash flow.**

Companies deduct the cost of the COBRA subsidy from their payroll taxes, Cohen said. For example, if a company owes $1 million in payroll taxes and the COBRA subsidy costs $300,000, then the company forwards $700,000 in taxes.

As for the time lag causing a cash flow crunch? It can be a problem, Cohen said, especially if the company has to make payments to an insurance company.

**Q:My spouse has health insurance. Do I have to join that plan, or can I apply for the COBRA subsidy?**

If you’re eligible to join your spouse’s group health plan — many plans allow terminated spouses to sign up within a 30-day window — then you can’t take advantage of the COBRA subsidy, Gelsomini said.