

# Tech Flex

## Topics Covered in this Issue:

### Benefits:

- DOL Releases Final ARRA Premium Subsidy Appeals Form
- IRS Releases Additional ARRA Guidance

### Payroll:

- IRS Updates Form 941
- New York Provides Additional Commuter Transportation Tax Information

### Leave:

- Paid Parental Leave Passes House
- Maryland Flexible Leave Act Amended



## **DOL RELEASES FINAL ARRA PREMIUM SUBSIDY APPEALS FORM**

The Department of Labor (DOL) has posted the final version of the COBRA subsidy appeals form and instructions as well as general information on the appeals process on its website. The appeal form is to be used by individuals who are denied treatment as an “assistance eligible individual” by their former employer in relation to the American Recovery and Reinvestment Act of 2009 (ARRA). The instructions state that individuals filing ARRA appeals should provide (where available) the following documents:

- COBRA election notice.
- Information on the plan sponsor, employer, insurance company, and/or plan administrator.
- A "Request for Treatment as an Assistance Eligible Individual" or other form used to request the premium reduction.
- Insurance information card.
- Payroll stubs showing deductions for health benefits.
- Any documents detailing the date and circumstances of the termination of the employee's employment.
- Any documentation provided regarding the denial of the premium reduction.

The DOL encourages individuals filing appeals to complete and submit the application online, but a print version is also available.

**Please click on the link provided below to access the DOL “Application for Review of Denial of COBRA Premium Reduction” webpage.**

<http://www.dol.gov/ebsa/COBRA/main.html>

As way of background, ARRA provides that a person qualifying as an AEI will have paid the required premium for coverage elected under the provisions of COBRA if the pay 35% of the COBRA premium. The remaining 65% will be paid on the AEI's behalf generally by the former employer who will be reimbursed in the form of a credit to payroll taxes owed by the employer to the Internal Revenue Service.

ARRA also provides that where an individual requests the COBRA subsidy (or by payment of 35% of the applicable COBRA premium) and the group health plan denies that request, the individual has the right to appeal the denial to the DOL. ARRA further requires that a determination of the individual's appeal must be decided "within 15 business days after receipt of such individual's application for review." All determinations made by the responsible governmental agency are final and "a reviewing court shall grant deference to such determination."

**For additional information on the ARRA COBRA provisions including the premium subsidy, please see the February 2009 Tech Flex. [\[LINK\]](#)**

## **IRS RELEASES ADDITIONAL ARRA GUIDANCE**

The Internal Revenue Services (IRS) continues to release additional frequently asked questions in relation to the 65% Consolidated Omnibus Budget and Reconciliation Act (COBRA) premium reduction available for coverage provided under the American Recovery and Reinvestment Act of 2009 (ARRA).

On June 4, 2009, the IRS posted 19 additional questions to its website. This recent information provides guidance on the issues of involuntary termination, TRICARE eligibility, the impact of paying COBRA premiums on a pre-tax basis and payroll tax credit processing.

**For a copy of the revised IRS frequently asked questions, please click on the link provided below.**

**<http://www.irs.gov/newsroom/article/0,,id=204708,00.html>**

As reported in a previous Tech Flex, ARRA provided an opportunity to pay reduced COBRA premiums to employees who are involuntary terminated anytime from September 1, 2008 through December 31, 2009 (and the spouses and/or dependent children of such employees).

**For additional information on the ARRA COBRA provisions including the premium subsidy, please see the February 2009 Tech Flex. [\[LINK\]](#)**

## IRS UPDATES FORM 941

The Internal Revenue Service (IRS) has released revised versions of Form 941, “Employer’s Quarterly Federal Tax Return”, and the “Instructions for Form 941.” Form 941 is used by employers to report employment taxes, withholding amounts, deposit amounts, and amounts due to the IRS. Form 941 requires totals for:

- Number of employees and total pay for the period being reported.
- Amounts withheld from pay of employees for the period.
- Taxable Social Security and Medicare wages for the period.
- Calculation of total Social Security and Medicare wages.
- Adjustments for sick pay, tips, group-term life insurance.
- Advance earned income credit payments made to employees.

The form also requires a calculation of the total taxes and the total deposits made during the period. The difference between the total taxes due and the total deposits is the amount still owed that must be paid.

Form 941 was updated to provide revised directions in relation to Lines Form 12a and 12b in relation to provisions of the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA provides that certain individuals (known as assistance eligible individuals or AEIs) who were involuntary terminated for the period beginning September 1, 2008 and ending on December 31, 2009 are eligible to receive a COBRA premium subsidy. AEIs will be required to pay 35% of the premium and the remaining 65% will be paid on their behalf generally by the former employer who will be reimbursed by the government in the form of a credit to payroll taxes owed by the employer to the Internal Revenue Service when filing Form 941.

The instructions for Lines 12a and 12b have been modified to read as follows:

**12a. COBRA premium assistance payments**

Report on this line 65% of the COBRA premiums for assistance eligible individuals. Take the COBRA premium assistance credit on this line only after the assistance eligible individual's 35% share of the premium has been paid. For COBRA coverage provided under a self-insured plan, COBRA premium assistance is treated as having been made for each assistance eligible individual who pays 35% of the COBRA premium. Do not include the assistance eligible individual's 35% of the premium in the amount entered on this line.

**12b. Number of individuals provided COBRA premium assistance on line 12a**

Enter the total number of assistance eligible individuals provided COBRA premium assistance reported on line 12a. Count each assistance eligible individual who paid a reduced COBRA premium in the quarter as one individual, whether or not the reduced premium was for insurance that covered more than one assistance eligible individual. For example, if the reduced COBRA premium was for coverage for a former employee, spouse, and two children, you would include one individual in the number entered on line 12b for the premium assistance. Further, each individual is only reported once per quarter. For example, an assistance eligible individual who made monthly premium payments during the quarter would only be reported as one individual.

**For a copy of the revised Form 941, please click on the link provide below.**

<http://www.irs.gov/pub/irs-pdf/f941.pdf>

**For a copy of the revised Form 941 Instructions, please click on the link provided below.**

<http://www.irs.gov/pub/irs-pdf/i941.pdf>

## **NEW YORK PROVIDES ADDITIONAL COMMUTER TRANSPORTATION TAX INFORMATION**

As noted in a previous Tech Flex, the state of New York enacted the Metropolitan Commuter Transportation Mobility Tax (MCTMT). The MCTMT became or becomes effective March 1, 2009 for employers, January 1, 2009 for self employed individuals and September 1, 2009 for public school districts located within the Metropolitan Commuter District. The purpose of this new tax is to fund the Metropolitan Transportation Authority (MTA) and applies to employers who are required to withhold New York State income tax from employee wages and whose payroll expense exceeds \$2,500 in any calendar quarter.

On June 1, 2009, the New York State Department of Taxation and Finance released additional guidance of the MCTMT in the form of a detailed white paper.

**For a copy of the MCTMT guidance, please click on the link provided below:**

[http://www.tax.state.ny.us/pdf/memos/mta\\_mobility/m09\\_1mctmt.pdf](http://www.tax.state.ny.us/pdf/memos/mta_mobility/m09_1mctmt.pdf)

**For additional information on the MCTMT, please see the May 2009 Tech Flex [LINK].**

## **PAID PARENTAL LEAVE PASSES HOUSE**

On June 4, 2009, the Federal Employees Paid Parental Leave Act of 2009 (H.R. 626), passed in the United States House of Representative by a 258 to 154 vote. Should H.R. 626 be enacted into law as now written, federal government employees would be provided four weeks of paid parental leave for the birth, adoption, or fostering of a child. The measure now will be sent to the United States Senate for consideration.

**For a copy of H.R. 626, please click on the link provided below:**

<http://www.govtrack.us/congress/billtext.xpd?bill=h111-626>

## MARYLAND FLEXIBLE LEAVE ACT AMENDED

The Maryland General Assembly, via Senate Bill 562, overwhelmingly voted to revise and clarify key terms in the Maryland Flexible Leave Act (MFLA). As an emergency measure, the amended Act became effective on May 19, 2009, the date on which the Governor signed it. The purpose of the amendments to the MFLA is to provide specific definitions of key terms that had previously been undefined. The new law contains definitions of significant terms referenced in the MFLA, such as "employee," "employer," "child," "parent," "leave with pay" in addition to clarifying under what circumstances an employee is entitled to paid leave.

The MFLA as amended clarifies the following:

- An employee must be primarily employed in Maryland.
- An employer must employ 15 or more employees in Maryland, and employ those employees for "each working day in each of 20 or more calendar weeks in the current or preceding calendar year."
- Only a child, spouse, or parent of the employee is considered an immediate family member.
- The term child is now clarified to mean a biological, adopted, foster, and step child, or legal ward that is under 18 years old. However, the age ceiling is waived where such individual is incapable of self-care due to a mental or physical disability.
- Leave with pay is now defined as paid time away from work that "is earned and available to an employee."

Significantly, the amended MFLA clarifies that leave with pay does not include short term disability leave, other disability benefits, workers' compensation, or similar benefits.

In addition, an employer may deny paid leave under the MFLA if an employee violates the employer's leave policies, which can include sufficient notice and adequate documentation. The MFLA states that: "[t]he purpose of this section is to allow an employee of an employer to use leave with pay to care for an immediate family member who is ill under the same conditions and policy rules that would apply if the employee took leave for the employee's own illness."

As background, the MFLA was originally signed into law on May 22, 2008 and became effective on October 1, 2008. Under the MFLA, Maryland businesses employing 15 or more employees must allow their employees to use any form of accrued leave with pay to care for an immediate family member who is ill. The law is limited to employers that provide leave with pay to their employees. Employers who do not provide paid leave as an employee benefit are not required to implement paid leave programs to comply with the law.

If an employer with 15 or more employees provides paid leave, it must permit its employees to use any type of accrued leave they have available to take time off to care for any member of their immediate family (including a child, parent or spouse) who is sick. To the extent that an employee has more than one form of paid leave available, the employee has the right to elect the type and amount of leave with pay to be used. Based on concerns brought forth by the business community, the MFLA generally entitles employees to use any accrued personal paid leave for the illness of an immediate family member.

**For a copy of Maryland Senate Bill 562, please click on the link provided below:**

[http://mlis.state.md.us/2009rs/chapters\\_noln/Ch\\_560\\_sb0562T.pdf](http://mlis.state.md.us/2009rs/chapters_noln/Ch_560_sb0562T.pdf)

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**\*\*Please note that the information provided in this document is current as of the date it is originally published.\*\***