



What Is An Involuntary Termination For COBRA Subsidy Purposes?

IRS Notice 2009-27 defines involuntary termination for the sole purpose of determining who is an “assistance eligible individual” for COBRA premium subsidy purposes, provided the involuntary termination occurs during the period from September 1, 2008 through December 31, 2009.

Whether a termination of employment is involuntary is based on all of the facts and circumstances, applying the following standard:

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

The IRS Notice in Q&A’s 1-9 include a number of helpful examples of an involuntary termination of employment, such as:

- an employer’s failure to renew an employment contract;
- an employee-initiated termination for good reason due to an employer action that causes a material negative change in the employment relationship (such as a reduction in hours);
- a termination designated by the employer as voluntary or due to a resignation, which may be involuntary if the employer would have terminated the employee’s services had the employee not voluntarily terminated or resigned, and the employee has knowledge that he would otherwise be terminated;
- a lay-off, furlough or suspension of employment, with a recall right;
- an employer action to end employment while an employee is absent due to illness or disability;
- retirement, if the employer would have otherwise terminated the employee and the employee had knowledge that he/she would otherwise be terminated;
- termination for cause, unless due to gross misconduct;

- resignation as a result of a material change in the employee's geographic location of employment;
- a lockout initiated by the employer, but not a strike initiated by employees or their representatives; and
- a termination elected by an employee under a severance package (or "buy out"), where the employer indicates that a certain number of remaining employees in a group will be terminated.

The notice also clarifies that the involuntary termination only applies to a termination of employment, not the involuntary termination of health coverage, such as due to a divorce or a dependent child ceasing to be a dependent.

You can access IRS Notice 2009-27 at <http://www.irs.gov/pub/irs-drop/n-09-27.pdf>.

Please let us know if Haynes Benefits can be of assistance.

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