



Employment Law Note

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Employers Have Until May 31, 2021 to Provide Notice of COBRA Subsidy in American Rescue Plan Act



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On March 11, 2021, President Biden signed into law the American Rescue Plan Act (ARPA). One of the ARPA provisions provides for a 100-percent COBRA subsidy and additional COBRA enrollment rights for employees (and their families) who lost employer-sponsored health coverage as a result of an involuntary termination of employment or a reduction of hours. Because of the notice requirements in the ARPA regarding the new COBRA subsidy program, employers will need to act promptly to comply with the May 31, 2021, deadline.

Consolidated Omnibus Budget Reconciliation Act of 1986

The Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA") provides a person who loses employer-sponsored health coverage the opportunity to remain in that coverage if they elect to pay the full premium amount, plus an administrative fee of two percent. A person qualifies for COBRA coverage if their employment is terminated, for any reason other than gross misconduct, or if their hours are reduced. Family members of an employee also qualify for COBRA coverage along with the employee or in the event of the death of the employee, divorce, or if the employee gains eligibility for Medicare. The employee must be enrolled in the employer health plan at the time of the qualifying event.

The cost of continuing coverage through COBRA can be prohibitively expensive for many individuals,

particularly when an individual lost their employment involuntarily during the COVID-19 pandemic.

The American Rescue Plan Act's COBRA Assistance Provision

To address COBRA costs, the ARPA creates a 100-percent subsidy for COBRA coverage premiums from April 1, 2021 through September 30, 2021, meaning "Assistance Eligible Individuals" are not required to pay their COBRA continuation coverage premiums. An "Assistance Eligible Individual" is a qualified beneficiary who lost employer-sponsored health coverage due to an involuntary termination of employment or reduction in hours and whose maximum COBRA period has not expired by April 1, 2021. The ARPA's COBRA premium subsidy does not apply to individuals who voluntarily quit their employment. An employer or plan to whom COBRA premiums are payable will receive a credit against payroll taxes for the cost of the subsidy.

The COBRA premium assistance provisions in the ARPA apply to all group health plans sponsored by private-sector employees or employee organizations subject to the COBRA rules under the Employee Retirement Income Security Act of 1974.

No later than May 31, 2021, employers must send a notice of a special enrollment period to all eligible participants who have either not yet elected COBRA coverage by April 1, 2021, or elected COBRA coverage but then discontinued it. The notices will need to address the availability of the premium assistance, the option to enroll in different coverage, and the extended period to enroll in COBRA continuation

coverage. The U.S. Department of Labor anticipates issuing model notices in the next few weeks.

Eligible participants will then have until 60 days after receipt of the notice to elect COBRA coverage. If an eligible participant elects COBRA coverage, the election applies prospectively and not retroactively to the date coverage was lost. Moreover, COBRA coverage will still expire 18 months after coverage was lost, even if that is in the middle of the subsidy period. In other words, the ARPA subsidy does not extend COBRA coverage.

Key Takeaways

In light of the COBRA assistance provision in the ARPA, employers should:

- Identify COBRA qualified beneficiaries who had a qualifying event in 2020;
- Prepare notices addressing the availability of the premium assistance, the option to enroll in different coverage, and the extended period to enroll in COBRA continuation coverage;
- Send extended election notices to Assistance Eligible Individuals by May 31, 2021; and
- Track premiums for the subsidized COBRA to accurately claim tax credits.

For questions about the ARPA, or assistance in preparing employee notices, please contact us at Sebris Busto James.

For more information about this month's Employment Law Note
contact us at [425-454-4233](tel:425-454-4233)



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