

COBRA Premium Subsidy Under the American Rescue Plan Act: Employers Need to Take Action by May 31, 2021

Labor & Employment Workforce Watch

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Under the American Rescue Plan Act of 2021 (ARPA), which was signed into law by President Biden on March 11, 2021, certain individuals who lost group health plan coverage due to an involuntary termination of employment or reduction in hours may be eligible to receive a 100% COBRA premium subsidy. The subsidy is available from April 1 to September 30, 2021. Employers who provide the subsidy are entitled to a refundable payroll tax credit.

The subsidy applies to all group health plans sponsored by employers subject to COBRA under the Employee Retirement Income Security Act of 1974 (ERISA), and plans sponsored by State or local governments subject to continuation provisions under the Public Health Service Act (PHSA). This includes medical, dental and vision plans, but it does not apply to health flexible spending accounts (FSAs). It also applies to State “mini-COBRA” laws for small health plans exempt from the federal COBRA.

The subsidy is available to “Assistance Eligible Individuals” (AEIs). AEIs include individuals (*i.e.*, employees and their eligible dependents) who (i) lost group health plan coverage as a result of an involuntary termination of employment (other than for gross misconduct) or a reduction in hours and (ii) are, or could have been, eligible for COBRA at any time between April 1, 2021 and September 30, 2021. AEIs include employees whose 18-month maximum COBRA has not yet expired (*i.e.*, employees who were terminated on or after October 1, 2019). Employees who voluntarily terminated their employment or individuals who are eligible for COBRA coverage as a result of divorce, death, Medicare eligibility or loss of dependent status are not eligible for the subsidy.

Employers are required to notify AEIs who are entitled to, but not enrolled in, COBRA coverage as of April 1, 2021, of a new opportunity to elect fully subsidized COBRA coverage. This notification obligation includes individuals who had elected COBRA continuation coverage, but terminated it prior to April 1, 2021. Employers must send this special enrollment period notice to AEIs by May 31, 2021. The Department of Labor has released model COBRA notices for this purpose.

It should be noted that the Department of Labor recently confirmed that eligible individuals can elect COBRA continuation coverage only for the period of the subsidized premiums (as of April 1, 2021), rather than retroactively to the date when they originally lost group health plan coverage.

Employers should immediately start planning for compliance with the COBRA subsidy provisions, including reviewing records to identify eligible employees and working with their COBRA administrators to ensure the

requisite notices are sent by May 31, 2021.

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