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COVID-19 Resource Guide for Human Resources Professionals: Employers Must Notify Workers About New COBRA Continuation Coverage Rights by May 31

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Who Needs to Know

U.S. employers, particularly HR personnel.

Why It Matters

The May 31 deadline to notify workers about new COBRA continuation coverage rights is rapidly approaching. Many employers still have questions about who should receive this notice. This alert provides a step-by-step guide to help answer this question.

By now you're aware that the American Rescue Plan Act (ARPA), signed into law by President Biden on March 11, provides a six-month COBRA subsidy for individuals who lose health coverage due to an involuntary termination of employment or reduction of hours. We're also certain that you're aware of the looming May 31 deadline for distribution of the new **COBRA Continuation Coverage Notice in Connection with Extended Election Periods**. For an in-depth discussion of the Premium Assistance Subsidy, refer to our [March 25](#) and [April 15](#) alerts.

This fourth edition of our series — COVID-19 Resource Guide for Human Resources Professionals — provides a step-by-step guide to determine who should receive the special Extended Election Period Notice (Notice). This guide is not meant to cover all scenarios or nuanced cases, and there are still open questions for which federal agencies need to provide guidance. Rather, you should use this as a general framework for compliance and seek assistance with specific questions.

If you have any questions, please contact any member of the Troutman Pepper Employee Benefits and Executive Compensation Practice Group or the COVID-19 Response Team. We are here to help you in any way that we can.

Step 1:

Are you an employer that sponsors a group health plan requiring you to offer continuation coverage under federal COBRA or a state mini-COBRA law?

Yes – continue to Step 2.

No – you are not required to provide the Notice.

Step 2:

Did any employees terminate employment or lose health coverage due to a reduction of hours between October 1, 2019 and March 31, 2021?

Yes – continue to Step 3.

No – you are not required to provide the Notice.

Step 3:

Arrange the terminated employees into two separate groups:

Group 1

Involuntarily Terminated or Qualified for COBRA due to a Reduction in Hours

Group 2

Voluntarily Terminated

If you identified individuals in Group 1 – continue to Step 4.

You are not required to provide the Notice for individuals identified in Group 2.

Step 4:

Arrange the individuals from Group 1 into three separate categories:

Category 1

Elected COBRA at the Time of the Qualifying Event and Still on COBRA as of April 1, 2021

Category 2

Elected COBRA at the Time of the Qualifying Event but Discontinued Coverage Prior to April 1, 2021

Category 3

Didn't Elect COBRA at the Time of the Qualifying Event

Provide the Notice for individuals identified in Category 1, so they know to notify you if they are not eligible for the subsidy. You can either automatically provide the subsidy to these individuals unless and until they let you know that they are not eligible for the subsidy, or you can require these individuals to submit a request for treatment as an assistance eligible individual before providing the subsidy to them. If an assistance eligible individual on COBRA pays his/her premium during the COBRA subsidy period (April 1 – September 31), you are required to return the premium payment within 60 days of receipt.

Provide the Notice to individuals identified in Categories 2 and 3.

Notice also must be provided to the spouse and/or dependents of individuals identified in all three categories.

Based on your analysis, if you are required to distribute the COBRA Continuation Coverage Notice in Connection with Extended Election Periods, the DOL has prepared a Model Notice, which you can also access on the DOL's COBRA Premium Subsidy web page. You also must attach to the Notice a copy of the Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021, which provides individuals with a

COBRA Premium Subsidy summary and includes forms that individuals believing to be eligible for the subsidy can use to notify their employer (or former employer), as well as forms to inform the plan if ineligible for the COBRA Premium Subsidy due to eligibility for other coverage.

Additionally, a revised ARPA General Notice and COBRA Continuation Coverage Election Notice should be distributed for all qualifying events occurring from April 1, 2021 through September 30, 2021. The DOL has prepared a Model Notice for this revised notice as well.

Lastly, if your group health plan is subject to state continuation requirements (*i.e.*, state mini-COBRA laws), the Model Alternative Notice of ARPA Continuation Coverage Election Notice should be used in lieu of the above notices.

Employers failing to satisfy the COBRA requirements for the COBRA Premium Subsidy may be subject to excise taxes of up to \$100 per qualified beneficiary, but not more than \$200 per family, for each day that the employer is in violation of the COBRA requirements. In addition, qualified beneficiaries could sue to recover statutory penalties of up to \$110 per day for failure to provide these new COBRA notices.

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