



AMERICAN RESCUE PLAN ACT'S SIGNIFICANT IMPACTS TO EMPLOYERS' RESPONSIBILITIES UNDER COBRA

Employers ~ Did you know that as of April 1st, you need to offer 100% employer covered COBRA benefits to all involuntarily terminated employees who were let go from November 1, 2019 or after.

Employees ~ Did you know you are entitled to fully covered health insurance benefits from your former employer between April 1st – September 30, 2021 if you were involuntarily terminated, whether it was due to layoff, reduction in force, performance based or policy violations since November 1, 2019, and whether or not you elected it when you were first let go.

A little primer on COBRA

The Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) included a provision that allowed a person who loses employer-sponsored health insurance benefits to remain on that coverage if they elect to pay the full premium amount (employers are allowed to charge up to a 2% administrative fee on top of the premium).

Under traditional COBRA, a person qualifies for 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 if all were enrolled in the employer health plan at the time the employee was let go. A person has 60 days to enroll in COBRA coverage after their termination. COBRA coverage can be maintained for 18 months.

COBRA generally applies to employers with 20 or more employees. However, most states have a state continuation of coverage program required for employers with less than 20 employees, often called mini-COBRA (for example, Massachusetts and California are 2 of the states requiring mini-COBRA for employers with less than 20 employees, with Texas requiring its own version of State Continuation Coverage). While each state structures its mini-COBRA system a little differently, basically the programs function the same way as COBRA.

The American Rescue Plan Act and COBRA Assistance

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 ("ARPA") which is another coronavirus stimulus package aimed at speeding up the United States' recovery from the economic and health effects of the COVID-19 pandemic. Among the many relief provisions in ARPA, this alert focuses on significant changes to the COBRA continuation coverage rules in the form of temporary Employer 100% subsidized premiums for certain individuals.

ARPA creates a new requirement for employers to cover 100% of COBRA coverage premiums from April 1, 2021, through September 30, 2021, whether the employee elected to take the coverage or not during that initial 60-day election period. *That means ARPA opens up the ability to enroll in COBRA coverage even if a person declined coverage earlier or if their enrollment*

window closed. Finally, ARPA extends the subsidy to continuation coverage under state mini-COBRA requirements.

If an Employee voluntarily resigned, are they eligible for this new coverage?

No. The COBRA subsidy is not available for employees who voluntarily left their job. Further, individuals who are eligible for other employer-sponsored health coverage or Medicare are not eligible for the subsidy and are obligated to notify the employer accordingly.

Are Employees who previously declined or discontinued COBRA eligible for the subsidy?

Yes, the subsidy extends to those who may have declined or discontinued their COBRA coverage, as long as they are still within their coverage period. Such election would be prospective from April 1, 2021, only, without needing to elect and pay retroactive to the date coverage was lost or discontinued. Eligible individuals will have 60 days from receipt of the new COBRA extension notice to enroll.

Do all Employers need to provide the subsidy and enrollment options to Employees?

Yes. All group health plans (including insured and self-funded plans) subject to COBRA and mini-COBRA (except health flexible spending accounts (FSA)) must provide this subsidized coverage.

Will Employers be reimbursed for covering the COBRA premium subsidy?

Yes. The employer, insurer or multiemployer plan sponsor will be able to offset the cost through a payroll tax credit against the Section 3111(b) Medicare tax. The credit includes the entire COBRA premium, including the 2% administrative fee. The credit is refundable. If an employer's COBRA premium costs for affected plan participants exceed their Medicare payroll tax liability, they can file to get direct payment of the remaining credit amount. It is anticipated that forthcoming regulations will clarify how the credit applies to small employers covered under mini-COBRA continuation laws.

How long are Employers required to sponsor this subsidy?

From April 1, 2021, through September 30, 2021, unless the eligible employee's COBRA coverage period expires during that time period.

Do ARPA provisions extend an individual's COBRA coverage period?

No, ARPA does not extend the COBRA coverage period, which typically expires 18 months after coverage was lost, even if that is in the middle of the subsidy period. Apart from ARPA, COBRA coverage can be extended for a second qualifying event (up to a total of 36 months). ARPA does not address whether the subsidy will apply during that period.

What notices are required for Employers to provide impacted Employees and their eligible dependents?

Employers are required to provide notice of the availability of the subsidy, notice of the extended election period for COBRA coverage, and notice of the expiration of the subsidy. *The US Department of Labor will be issuing model notices for employers to use by April 10th.* Employers will need to act fast to get those notices out to eligible former employees, called Assistance Eligible Participants (AEIs) under ARPA.

What should Employers do first?

- ❖ Employers, *especially small employers*, should confirm what is the required employee coverage period under COBRA and state mini-COBRA.
- ❖ Get a list together of all former employees who are AEIs.
- ❖ Employers should connect with their health insurance companies to confirm the process for benefits reinstatement.
- ❖ Employers who rely on a third-party administrator (TPA) for COBRA should confirm the TPA will send the required notices to those eligible and will provide you with the information necessary to claim the payroll tax credit. Employers will need to advise the TPA of which individuals are eligible for the subsidy.
- ❖ Employers (or their TPA) will need to send the notice to AEIs within 60 days after April 1, 2021, which is May 31, 2021. Upon receipt of the notice, eligible individuals will have a 60-day enrollment opportunity.

Can Employers offer AEIs enrollment in a different group plan?

Yes. Under ARPA, employers have the option to allow eligible individuals to elect a different coverage option offered by the employer if that option is less expensive. This is not required. If employers provide this option, they need to give AEIs 90 days from the date they received the notice to enroll in the lower cost plan.

