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American Rescue Plan Act of 2021, COBRA, and Required Notices

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UPDATE: April 7, 2021

As a follow up to our prior alert regarding the American Rescue Plan Act of 2021, we are now sharing the updated U.S. Department of Labor link, where you can find COBRA model notices and FAQs related to it: **D.O.L. LINK**

If you have any questions or concerns, please contact one of our labor & employment attorneys, or call 814-459-2800.

Summary

The American Rescue Plan Act of 2021 (ARPA) includes provisions that immediately impact employers subject to COBRA. For employees or beneficiaries who involuntarily incur a loss of coverage due to termination of employment or reduction of hours from April 1, 2021 through September 30, 2021 ARPA subsidizes the COBRA premium payment through September 30, 2021. For employees or beneficiaries who involuntarily incurred a loss of coverage between November 1, 2019 and April 1, 2021, and who either did not elect COBRA or allowed it to lapse, ARPA creates a current opportunity to elect (or re-elect) COBRA prospectively.

Introduction

The American Rescue Act Plan of 2021 (ARPA), signed into law on March 11, 2021, includes:

- 100% COBRA subsidy for up to six months for anyone who lost health coverage because of an involuntary termination or involuntary reduction in hours; and
- A special election period for certain former employees who did not initially elect COBRA or who let their COBRA coverage lapse.

6-Month COBRA Subsidy

ARPA creates a six-month subsidy period from April 1, 2021 to September 30, 2021, during which certain "assistance eligible individuals" may qualify for a 100% subsidy for COBRA coverage. "Assistance eligible individuals" are those who lost coverage because of an involuntary termination of employment or a reduction in hours and who elect COBRA coverage.

These assistance eligible individuals would pay no cost for monthly COBRA premiums or administrative fees. Employers may (but are not required to) allow employees to enroll in other health plan options offered by the

employer (rather than the option the employee was enrolled in prior to the loss of coverage) if that option is less expensive.

The subsidy period does not extend the maximum COBRA coverage period (generally, 18 months for termination or reduction in service hours) It defers the eligible individual's obligation to make COBRA premium payments for up to six months. The employer pays the COBRA premiums and recovers the cost by claiming a credit against Medicare payroll taxes.

The subsidy ends if the eligible individual becomes eligible for coverage under another group plan or Medicare. The individual is required to notify the employer or plan administrator upon becoming eligible for the other coverage and there is a penalty for failure to provide this notification.

Special Election Lookback to November 1, 2019

Employees and family members who lost coverage because of an involuntary termination or reduction in hours between November 1, 2019 and April 1, 2021, but who did not elect COBRA or let their COBRA lapse, will have until 60 days after receipt of the notice to elect COBRA. Any election for these participants would be prospective only, and not retroactive to the date coverage was lost. This special election does not extend the maximum COBRA coverage period.

NOTE: The 6-month subsidy and the special election rules are not optional and apply to all employer-sponsored group health plans subject to COBRA, except FSAs.

What Must Employers Do?

Employers must determine which employees/dependents lost health plan coverage on or after November 1, 2019 because of an involuntary termination or reduction in hours. Within this group, the employer must identify those who (a) did not elect COBRA coverage or (b) elected COBRA, but subsequently allowed the COBRA coverage to lapse.

Employers are required to provide new notices to those who become eligible for COBRA continuation coverage on or after April 1, 2021 through September 30, 2021. The notices will address the availability of the new subsidies and the option to enroll in different coverage (if available).

Before June 1, 2021, employers are required to provide notice to those eligible for the special election lookback to November 1, 2019. The Department of Labor (DOL) will publish guidance as to the content of the notices for the subsidy and the special election lookback. The DOL guidance is anticipated before April 10, 2021. With respect to involuntary terminations after April 1, 2021, employers will want to wait for the DOL guidance to avoid incorrect or multiple and confusing COBRA notices.

If you have further questions about COBRA or employee benefits, contact one of our labor & employment attorneys; or call us at 814-459-2800.

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