

American Rescue Plan Act Contains COBRA Subsidies

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On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (“ARPA” or the “Act”) into law. The Act creates a six-month subsidy period, from April 1, 2021 to September 30, 2021, during which individuals who lost health insurance coverage because of an involuntary termination or reduction in hours may qualify for a 100% subsidy for COBRA coverage.

This subsidy has no income threshold, but an employee or family member who is or becomes eligible for other group health coverage or Medicare is not eligible. The employee has the obligation to notify their employer if the employee is not eligible or loses eligibility for the subsidy. The Act suspends an eligible individual's obligation to make the required COBRA premium payments for up to six months. Instead, the employer, plan, or insurer will be required to pay the individual's premium payments during that period. To offset this cost and recover the cost of the coverage, the employer, plan, or insurer may claim a credit against Medicare payroll taxes or receive a refund of overpayment for credit amounts which exceed payroll taxes.

ARPA also creates an extended COBRA election period for those who previously declined COBRA coverage, or whose coverage was terminated because of non-payment of premiums. Those individuals will now have sixty days after receipt of the new COBRA notice to elect COBRA coverage. Furthermore, COBRA elections within this 60-day period will be forward looking, not retroactive to the date coverage was lost. However, the Act does not extend COBRA coverage; any COBRA coverage will still



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expire eighteen months after health insurance coverage was lost, which could potentially occur during the subsidy period.

The enactment of ARPA creates new obligations for employers. Employers must determine which of their employees lost health care coverage because of an involuntary termination or reduction in hours on or after November 1, 2019. The Act also creates required notices regarding the availability of the subsidy, the extended election period for COBRA coverage, and a notice of the expiration of the subsidy. Employers or their third-party COBRA administrators will be required to send such notices to each qualified employee by May 31, 2021. Pursuant to the Act, the U.S. Department of Labor is also required to issue model notices by May 1, 2021, that employers and third-party plan administrators may use. Employers who use third-party COBRA administrators for COBRA administration should confirm that those administrators are sending the new required notices to employees and providing the information employers need to claim the payroll tax credit.

If you have any questions regarding the new COBRA subsidy or any other COBRA-related issues, please do not hesitate to reach out to any member of Mirick O'Connell's Labor, Employment, and Employee Benefits Law Group.