

THOUGHT LEADERSHIP

LEGAL UPDATES

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COBRA Subsidies Under the American Rescue Plan Act of 2021

On March 11, President Biden signed the American Rescue Plan Act of 2021 (ARPA) into law. Among other provisions, ARPA provides for a 100 percent COBRA subsidy for up to 6 months for anyone who lost health coverage because of an involuntary termination or involuntary reduction in hours. ARPA also provides a “second chance” election for those who did not initially elect COBRA or who let their COBRA coverage lapse.

Employers will need to determine which employees/dependents lost health plan coverage within the past 18 months (on or after November 1, 2019), because of an involuntary termination of employment or reduction in hours.

Employers will need to send a notice to each of these employees (and their covered family members) within 60 days after April 1, i.e., May 31, 2021. The Department of Labor is supposed to issue model notices within 30 days of enactment.

Employees and family members who currently have COBRA coverage will be eligible for a 100 percent subsidy of their premiums for up to six months (through September 30, 2021). The employer, insurer or multiemployer plan sponsor will offset the cost by claiming a credit against Medicare payroll taxes.

Employees and family members who lost coverage because of an involuntary termination or reduction in hours after November 1, 2019, but who either 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. It is unclear

whether these election deadlines will supersede the previous Department of Labor extension for COBRA elections.

The ARPA subsidy does not extend COBRA coverage—coverage will still expire 18 months after coverage was lost, even if that is in the middle of the subsidy period. Apart from ARPA, 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.

Any employee or family member who is or becomes eligible for other group health coverage or Medicare is not eligible for the subsidy. The individual has the obligation to notify the employer if he or she is not eligible or loses eligibility.

Employers can 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 other option is less expensive.

The subsidy is not taxable to the COBRA beneficiary.

There is no income cap for the subsidy.

A few practical thoughts:

If your typical severance package includes paying a lump sum amount as a COBRA subsidy, consider reducing that amount for any months that would be included in the federal COBRA subsidy.

If you rely on a COBRA administrator, confirm that the COBRA administrator will send the new required notices and provide you with the information you or your insurer may need to claim the payroll tax credit.

In 2009, Congress adopted a COBRA subsidy that was originally scheduled to last for 9 months, and was later extended to 15 months. Be prepared for the ARPA COBRA subsidy to be extended.

This subsidy will make it much more likely that employees will elect COBRA for the subsidy period, potentially leading to higher claims. There may be an impact on your insurance or stop-loss insurance renewal.

Contact us

Our attorneys will continue to monitor these developments. If you have questions about how to administer COBRA coverage or how it will impact your business, contact Alan Kandel, Patricia Martin or your Husch Blackwell attorney.

CARES Act, COVID-19 & Return-to-Work Guidance

Husch Blackwell provides guidance regarding COVID-19 updates, the CARES Act, and rapidly changing state-by-state orders, including those that impact stay-at-home and return-to-work protocols. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.