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# Newest Stimulus Package Mandates COBRA Subsidies – Action may be Required by May 31st

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In March, 2021, President Biden signed into law the American Rescue Plan Act (ARPA). The law contains a number of provisions that employers should be aware of, including a new COBRA subsidy. Under ARPA subsidies covering 100% of COBRA premiums are available for certain individuals who are eligible for and enroll in COBRA coverage between April 1, 2021 and September 30, 2021. Below is a summary of some of the highlights from the new requirements.

## **Who is Eligible for the Subsidy?**

Two broad categories of employees may be eligible for the new subsidies. First, employees may qualify if they were involuntarily terminated or had their hours reduced and timely elected COBRA coverage after April 1, 2021. Second, employees who failed to elect or dropped COBRA coverage prior to April 1, 2021 can still be eligible for the subsidy if they make a special election during a period starting on April 1, 2021 and ending sixty (60) days after notice of their eligibility.

Employees who voluntarily resign are *not* eligible for the subsidy. Additionally, employees are no longer eligible for the subsidy if they become eligible for another source of coverage such as another employer's plan or Medicare.

## **Notice Requirements**

ARPA requires employers to send specific notices to eligible employees. Employers must notify Employees in the first eligibility group (those who become eligible after April 1, 2021) that they are eligible for the COBRA subsidy **by May 31, 2021**. Employers must notify employees in the second eligibility group of the special sixty (60) day election period **by May 31, 2021**.

Generally, the notices must include the following:

- An explanation of a qualified employee's right to subsidized COBRA coverage, and any conditions on eligibility to the subsidy.
- The procedure, including any necessary paperwork, for establishing eligibility for the COBRA subsidy.
- Contact information for the individual responsible for providing additional information about the premium subsidy.
- A description of the special election period described above.
- An explanation that a qualified employee is obligated to notify the plan if they are disqualified from receiving the COBRA subsidy due to eligibility for other group health plan or Medicare coverage along with a description of the penalty for failure to notify the plan of disqualification.

The Department of Labor is expected to issue model language for the notices by **April 10, 2021**.

## **Who Pays the Subsidy?**

The party responsible for subsidizing COBRA premiums under ARPA depends on the type of plan and how it is funded. The employer is responsible for multiemployer plans, plans subject to federal COBRA, and partially or fully self-insured plans. For other plans such as small-employer plans that are fully insured and not subject to federal COBRA, the insurer is the responsible entity. Regardless of who is responsible, ARPA allows that party to claim a credit against taxes. This credit is claimed on the responsible entity's quarterly payroll tax filing. The IRS is expected to issue more detailed guidance on how to claim this credit.

## **Conclusion**

Overall, the new COBRA subsidies require Employers to take immediate action. Employers should begin to assess whether there are any employees they need to issue notices to, and work with vendors and legal counsel to ensure they are complying with all of the new requirements. If you have questions about how these new requirements will impact your business please contact Erin Bailey at [ebailey@tuggleduggins.com](mailto:ebailey@tuggleduggins.com) or (336) 271-5264 or Matt Hoyt at [mhoyt@tuggleduggins.com](mailto:mhoyt@tuggleduggins.com) or (336) 271-5203.

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