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Lum Law Notes

**Mandatory COBRA Subsidy For
Certain Eligible Employees Under the
American Rescue Plan Act of 2021**

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Mandatory COBRA Subsidy For Certain Eligible Employees Under the American Rescue Plan Act of 2021

The American Rescue Plan Act (ARPA), which is part of President Biden's COVID-19 relief package recently signed into law, requires employers to subsidize the cost of COBRA coverage premiums from April 1, 2021 through September 30, 2021, for employees who lost health care coverage due to involuntary termination of employment through layoff or reduction of work hours. In exchange for providing this subsidy, employers will be reimbursed in the full amount of the covered subsidy or subsidies through a tax credit. Employers should be aware of this new subsidy requirement as well as required model notices just issued by the U.S. Department of Labor which must be provided to eligible employees. Some key points for employers regarding the COBRA subsidy are as follows:

- **Covered plans** - The ARPA COBRA subsidy applies to any group health plan subject to the federal COBRA or state "mini COBRA" rules. The subsidy is not applicable to a health flexible spending account.
- **Covered individuals** - The ARPA COBRA subsidy is available to individuals who lose or have lost health insurance coverage due to a layoff or involuntary termination of employment or reduction of hours and elect COBRA continuation coverage ("Assistance Eligible Individuals"). Assistance eligible individuals include the spouse and eligible dependent children of the affected employee. Individuals who lose coverage due to termination for gross misconduct, or through retirement or resignation or other voluntary reasons, are not eligible for the subsidy. The subsidy will be available to individuals who:
 - (i) Have COBRA coverage as of April 1, 2021;
 - (ii) Experienced a covered qualifying event between April 1, 2021 and September 30, 2021; and
 - (iii) Declined COBRA coverage or let coverage lapse but whose maximum period of COBRA coverage due to a covered qualifying event has not expired as of April 1, 2021.
- **Covered period** - An individual's subsidy period begins April 1, 2021 and will end on September 30, 2021, unless the individual reaches the end of their 18-month COBRA coverage period, or becomes eligible for another group health plan or Medicare, before that date. A covered individual who becomes eligible for other coverage during the subsidy period must notify their employer or plan of such eligibility, or face penalties for not doing so.
- **Subsidy amount** - The subsidy covers 100% of the COBRA premium during the covered subsidy period of April 1, 2021 through September 30, 2021. The subsidy amount is not taxable income to the individual. If a COBRA premium for a period of subsidized coverage is paid by the eligible individual, they must be reimbursed for their paid premium within 60 days after the date the premium payment was made.

- **Employer tax credit for subsidy** - The IRS is expected to issue further guidance on the employer tax credit for the COBRA subsidy, but generally employers will be reimbursed for the full cost of the subsidized COBRA premiums through a tax credit. To ensure maintenance of coverage, employers bear the responsibility for paying health insurance carriers for the COBRA premiums or ensuring that premiums are credited to self-funded plans.
- **Lower-cost plan option** - An employer may (but is not required to) allow an eligible individual to elect different coverage if the COBRA premium for that coverage costs the same or is less than the COBRA premium charged for the coverage in effect for the individual at the time of their qualifying event. The lower-cost option must be one that is offered to similarly situated active employees and may not be an excepted benefit, a qualified small employer health reimbursement arrangement, or a health flexible spending account.

MODEL NOTICES FOR EMPLOYEES

Employers may review information and frequently asked questions related to the COBRA subsidy, and obtain required Model Notices to be provided to eligible employees, at the U.S. Department of Labor's website at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>

The required Model Notices are:

- General Notice and Election Form for Newly Eligible Individuals: This Notice (*along with the Summary of COBRA Premium Assistance Provisions*) should be provided to eligible individuals who become entitled to COBRA between April 1 and September 30 notifying them of their eligibility for the subsidy and any applicable lower-cost plan option. A Model Alternative Notice also exists for small employer plans subject to state mini-COBRA laws.
- Notice and Election Form for Eligible Individuals Whose Qualifying Event Occurred Before April 1, 2021: This Notice (*along with the Summary of COBRA Premium Assistance Provisions*) should be provided to eligible individuals who previously elected COBRA coverage, as well as eligible individuals who declined COBRA coverage or who let COBRA coverage lapse. This notice also should include an election form for individuals that did not elect COBRA coverage or dropped COBRA coverage to allow them to elect subsidized coverage. Also, if the employer decides to allow a change in health plan coverage, a description of any applicable lower-cost plan option and related election form should be included. This Notice must be provided no later than May 31, 2021.
- Summary of COBRA Premium Assistance Provisions under the ARPA and Request for Treatment as an Assistance Eligible Individual: The Summary must be provided along with the first two Notices listed above. Included in the Summary is a "Request for Treatment as an Assistance Eligible Individual" which must be completed and returned by any eligible individual who wants to receive the COBRA subsidy, within 60 days of their receipt of the summary notice.
- Notice of Expiration of Premium Assistance: Notice of the date of expiration of the subsidy period and of other available coverage under unsubsidized COBRA must be provided to any eligible individual who elects the COBRA subsidy. This Notice must be sent between August 16, 2021 and September 15, 2021.

Employers should review whether any of their employees from March 30, 2020 forward lost their health care coverage due to reduction in work hours or involuntary termination of employment due to layoff, to determine whether they are subject to ARPA's COBRA subsidy and model notice requirements. This review time period incorporates the maximum 18-month COBRA continuation coverage period that includes the subsidy period of April 1, 2021 through September 30, 2021. Employers are also encouraged to communicate with their COBRA and plan administrators or insurers to make sure that all of the required notices are sent to eligible individuals as applicable.

To discuss any of this please contact one of the attorneys below:

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