Third Stimulus Requires Employers to Offer Free COBRA Coverage Offset by Medicare Tax Credits

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On March 11, President Biden signed into law the American Rescue Plan Act of 2021 (ARPA) as part of a new (third) COVID-19 stimulus relief bill. ARPA assists qualifying individuals who lose coverage under an employer's group health plan due to an involuntary termination of employment or reduction of hours by allowing them to opt for COBRA coverage at no cost. The federal government pays the tab by providing employers with an offsetting credit for the cost of coverage against their federal Medicare taxes.

COBRA generally requires employers with 20 or more employees who maintain a group health plan to offer continued coverage under the plan to employees (and covered dependents) for up to 18 months following a loss of coverage due to, among other things, a job loss or reduction in hours. An employer is permitted to charge up to 102% of the applicable monthly premium cost for COBRA coverage.

Under ARPA, employers subject to COBRA must allow employees (and covered dependents) who experience a loss of group health coverage due to either (i) a reduction in hours or (ii) an involuntary termination of employment (other than for gross misconduct) (an ARPA qualifying event) to receive fully subsidized (free) COBRA coverage from April 1 through September 30, 2021 (but not past the date that COBRA would have expired for the individual). Employers are required to refund any COBRA premiums paid for coverage during the April 1-September 30 period by individuals who are eligible for the ARPA subsidy. These refunds must be made no later than 60 days after the date on which an individual made the premium payment.

The subsidy applies to anyone who:

- Incurs an ARPA qualifying event on or after April 1
- Has COBRA coverage as of April 1 as a result of an ARPA qualifying event
- Experienced an ARPA qualifying event prior to April 1 but had not yet elected COBRA coverage as of April 1
- Experienced an ARPA qualifying event prior to April 1 but declined or discontinued COBRA coverage prior to April 1

Individuals in the last group must be offered a new opportunity to elect COBRA during a special enrollment period from April 1 through the 60th day following receipt of the COBRA notice. These individuals can elect COBRA coverage (with the subsidy) prospectively and do not have to be offered retroactive COBRA coverage. Employers may, but are not required to, offer laid-off employees the option (for up to 90 days following receipt of a COBRA notice) to elect coverage under a health plan other than the one they participated in during employment (provided the other plan does not have higher premium costs than the one the individual had been covered by).

The subsidy is not available to employees who voluntarily terminate employment or who are eligible for coverage under another employer's health plan or Medicare. Individuals are required to notify a former employer if they become eligible for another health plan or Medicare, and are subject to penalties for failing to provide such notice.

ARPA requires plan administrators to satisfy certain notice requirements, including:

- Notifying eligible individuals of the availability of the subsidy and, to the extent applicable, of the ability to enroll in a lower-priced plan.
- Notifying eligible individuals who previously rejected or terminated COBRA coverage of their new COBRA election period and the availability of the subsidy. This notice must be provided by May 31.
- Notifying eligible individuals of when their subsidies will expire and that they may then be eligible for coverage without the subsidy through COBRA coverage or through coverage under another group health plan. This notice must be provided no more than 45, but no less than 15, days before the subsidy expires. The

U.S. Department of Labor (DOL) is directed to provide model premium assistance expiration notices by no later than April 25.

As mentioned above, the COBRA subsidy will be funded by the federal government to employers through credits against an employer's Medicare taxes. If the credit exceeds the amount of an employer's Medicare taxes due, the credit is refundable when an employer submits its quarterly Form 941. The credit may be advanced according to forms and instructions to be published by the IRS.

ARPA's COBRA requirements become effective April 1, so employers will have to move quickly to ensure compliance with new notification and administration changes. The DOL is required to issue model COBRA notices that will address the subsidy, and we anticipate other guidance will be issued shortly by both the DOL and the IRS.

Attorneys in Lowenstein Sandler's Employee Benefits and Executive Compensation Group will continue to review additional guidance from the DOL and the IRS and are available to answer any questions you may have about these new rules.

To see our prior alerts and other material related to the pandemic, please visit the Coronavirus/ COVID-19: Facts, Insights & Resources page of our website by clicking here.

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