



A Robinson+Cole Legal Update

Coronavirus (COVID-19)

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No Time to Waste: Employer Action Needed for COBRA Subsidy Administration

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The COBRA subsidy period (April 1, 2021 – September 30, 2021) has begun and with a number of issues still outstanding, employers have no time to lose when it comes to preparing to administer the [COBRA subsidy](#) required by the American Rescue Plan Act (ARPA) enacted on March 11, 2021. While we have received limited guidance from the U.S. Department of Labor (DOL), we still expect and await additional guidance from the DOL and the Internal Revenue Service (IRS). Below are considerations for employers to begin thinking about now, including upcoming notice obligations.

- **Determine whether the employer's plan is covered under the COBRA subsidy rules.** All group health plans subject to federal COBRA and mini-state COBRA (e.g., this commonly includes fully-insured plans) are subject to the COBRA subsidy rules.
- **Coordinate with third-party administrators to determine responsibilities.** If the employer utilizes a third-party administrator to assist with meeting COBRA obligations, the employer should begin having conversations with those third-party administrators to determine who will send the required notices and who will be eligible to claim the tax credit.
- **Identify the group of Assistance Eligible Individuals*.** Assistance Eligible Individuals includes any employee that has a loss of coverage resulting from an involuntary termination of employment or any reduction in hours. This includes:
 - any employee experiencing one of these events during the subsidy period;
 - any employee whose maximum COBRA period has not expired by April 1, 2021; and
 - those eligible for the second enrollment opportunity (those who did not initially elect COBRA or who let COBRA coverage lapse). This generally includes individuals who had a COBRA right due to one of the above events between November 2019 and March 2021.

*Assistance Eligible Individual does not include anyone who lost coverage due to a voluntary termination of employment or for other COBRA-qualifying events.

- **Determine whether the employer will permit alternative coverage rights.** ARPA permits, but does not require, employers to allow employees to change their coverage option, provided certain conditions are met.
- **Provide an election notice to Assistance Eligible Individuals.** For those Assistance Eligible Individuals with current COBRA coverage on April 1, 2021, as well as those who are entitled to a second enrollment opportunity, an election notice must be provided no later than May 31, 2021. ARPA adds a number of additional content requirements for these notices, and the DOL has issued model notices, which can be found [here](#).

- **Refund any premiums paid by Assistance Eligible Individuals during the subsidy period.** Monitor COBRA premiums received to ensure that any premiums paid during the subsidy period by an Assistance Eligible Individual are refunded within 60 days of receipt.
- **Provide notice of termination of the subsidy.** Within 15-45 days prior to the termination of the subsidy, provide notice to Assistance Eligible Individuals that the COBRA subsidy will be ending. ARPA requires this notice to provide specific content. The DOL has issued a model notice, which can be found [here](#). For those Assistance Eligible Individuals whose COBRA subsidy expires at the end of the subsidy period, this notice should be provided between August 16, 2021 and September 15, 2021. For those Assistance Eligible Individuals whose COBRA coverage period expires prior to September 30, 2021, the notice will need to be provided 15-45 days prior to the date of loss of coverage.

With respect to claiming the tax credit, additional guidance, forms, and instructions are expected from the IRS.

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