March 15, 2021

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What employers need to know about the new COBRA subsidy

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One of Congress's goals in the American Rescue Plan Act of 2021 (ARPA) was to provide enhanced unemployment benefits and continued healthcare coverage to employees who lose their jobs as a consequence of the COVID pandemic. The latter goal was achieved by the federal government agreeing to pick up the cost of such individuals' COBRA coverage for up to six months beginning April 1, 2021. Individuals who voluntarily terminate their employment are not entitled to the COBRA subsidy.

Administering and communicating the new COBRA subsidy will pose challenges to employers. Here are the key features of the subsidy:

- ***Who is eligible***: COBRA-qualified beneficiaries who lose healthcare coverage due to an employee's involuntary termination (for reasons other than the employee's gross misconduct) or reduction of hours
- ***Amount of the subsidy***: 100% of the COBRA cost
- ***Length of the subsidy***: April 1, 2021, through September 30, 2021 (although subsidy ends when COBRA rights end, or, if earlier, when individual becomes eligible for other coverage)
- ***Methodology of reimbursement***: Employer recoups cost of COBRA coverage through refundable credits against the employer's Medicare taxes and may be able to request advance credits to fund the subsidy
- ***Tax consequence to employee***: Benefit is tax-free to employee

The subsidy automatically commences on April 1 for eligible individuals who are receiving COBRA coverage on that date. If a qualified beneficiary paid for COBRA coverage during the subsidy period, they must be reimbursed for such payment within 60 days after making the payment.

Employers, at their option, can elect to give qualified beneficiaries the opportunity to change their current coverage and choose different coverage as long as the cost of the new coverage does not exceed the cost of their current coverage. There is no requirement that employers provide this option to eligible individuals currently receiving COBRA coverage.

In contrast, employers must give former qualified beneficiaries who previously waived or dropped their COBRA rights but would be eligible for the subsidy if they had elected and maintained such coverage (i.e., those qualified beneficiaries who as of April 1, 2021, would still have time left in their original COBRA coverage period) the opportunity to take advantage of the subsidy. This will be an administrative challenge because it means employers will have to (i) identify such qualified beneficiaries, (ii) notify them of the availability of the subsidy, and (iii) provide a window for them to elect COBRA coverage. Unlike the current COBRA rules, which generally would require the coverage to commence retroactively to the date coverage was lost, this special election allows qualified beneficiaries to commence their coverage on April 1. The period for making this special election begins on April 1 and ends 60 days after the date the qualified beneficiary is provided the notification.

The COBRA subsidy ends before the expiration of the six-month period if the individual's maximum COBRA coverage period ends earlier or the individual becomes eligible for other group health coverage or Medicare. Individuals receiving the COBRA subsidy must notify the plan administrator when they become eligible for other group health or Medicare coverage, and might be subject to penalties if they fail to do so. The ARPA does not explain whether eligibility for other coverage requires actual enrollment in, or mere *eligibility to enroll in*, other coverage.

The ARPA requires employers to update their current COBRA forms to explain the special subsidy rights and include other specified information. In addition to using the updated forms for those who become eligible for COBRA on or after April 1, the new forms have to be provided to qualified beneficiaries who became eligible for COBRA coverage before April 1 (assuming their original COBRA coverage period did not end before April 1). The Department of Labor (DOL) is required to provide model language for the election notice by April 10.

In addition, the ARPA creates a new notification requirement. Specifically, qualified beneficiaries who qualify for the subsidy must be provided a "Notice of Expiration of Period of Premium Assistance" that explains the date when their subsidy will end and certain other specified information. Generally, this new notice must be provided no more than 45 days before and no less than 15 days before the date the subsidy will end. The notice does not have to be provided to qualified beneficiaries whose subsidies end because their COBRA period ends. The DOL is required to provide a model notice for this requirement by April 25.

Penalties apply if these notices are not provided, so employers should be careful to ensure their notices are updated to include all of the required information and are distributed in a timely manner.

In sum, employers will have to develop a game plan for complying with the new COBRA subsidy. Challenges include identifying all of the eligible individuals who are entitled to the subsidy, updating COBRA forms, and providing timely notifications. Employers' communication strategy also should take into account the extended election periods individuals have for electing COBRA coverage under prior DOL and Treasury guidance.

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