

COBRA Premium Subsidies Under the American Rescue Plan Act

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This content was published prior to the combination of Dentons Davis Brown. Learn more about Dentons Davis Brown.

The American Rescue Plan Act requires employers to subsidize 100% of the cost of COBRA and comparable state continuation coverage for “assistance eligible individuals” from April 1, 2021, through September 30, 2021. The cost of the subsidy to the employer will be offset by a payroll tax credit against the employers’ quarterly taxes. If the credit exceeds the amount of payroll tax owed by the employer, the credit would be refundable when the employer submits Form 941.

Who is eligible for the subsidy?

An “assistance eligible individual” is anyone eligible for continuation coverage because of a qualifying event based on termination of employment or reduction in hours; provided, however, individuals who are eligible for continuation coverage due to their voluntary termination of employment are not eligible. Based on the statutory language it appears an individual who is eligible for continuation coverage due to a reduction in hours for any reason, including a voluntary reduction, is eligible for the subsidy; however, more guidance on this issue as well as how “voluntary” termination is interpreted will likely be forthcoming from the federal government.

Assistance eligible individuals also include spouse/dependents who lose coverage in connection with the employee’s involuntary termination of employment or reduction in hours. It also appears that “assistance eligible individuals” could include individuals who previously declined to elect continuation coverage even if such failure to elect coverage occurred prior to March 1, 2020, when previous legislation relaxed the COBRA election requirements. We expect additional guidance from regulators on this issue.

When does the subsidy end?

Eligibility for the subsidy ends before the end of the maximum coverage period or September 30, 2021, if the individual becomes eligible for Medicare or other group health plan coverage. However, the act does not indicate whether that other group health plan coverage must be by virtue of the individual’s employment or whether the ability to be added as a spouse/dependent to other group health plan coverage disqualifies the individual for the subsidy. Individuals who do not notify employers that they are eligible for other group health plan coverage may be subject to penalties.

Employer Administrative Issues

The new legislation allows assistance eligible individuals the opportunity to elect continuation coverage if they previously declined to enroll as long as they are within the maximum coverage period. Employers must provide notice to assistance eligible individuals, including those individuals who did not previously elect coverage or the coverage

was discontinued but are within their maximum coverage period. Employers also have the option of allowing assistance eligible individuals to switch benefit options as long as the alternative coverage is no more expensive than the coverage they had been enrolled in.

Once an individual is receiving the subsidy, the employer must notify the individual that the subsidy is terminating between 45 and 15 days before the date that the subsidy will end.

The Departments of Labor, Treasury, and Health and Human Services are to provide employers with model notices implementing the act's new requirements and additional guidance on implementation is also expected.

Next Steps for Employers

While we wait for the Departments to issue model notices and additional guidance, employers should begin determining who their potential assistance eligible individuals are by looking back to November 1, 2019 (August 2020 for small employers subject to Iowa continuation coverage), and determining who:

(a) Is currently on their COBRA coverage because of a reduction in hours or involuntary termination of employment.

(b) Has lost coverage by virtue of their reduction in hours or involuntary termination of employment who did not elect COBRA or whose coverage was discontinued and determining for each the remaining length of their maximum coverage period.

Once employers identify who their assistance eligible individuals are, they should determine whether they intend to give eligible individuals the option of switching to a lower-cost plan option and monitor the status of the Departments' model notices.

Once the model notices are provided, employers will need to tailor them for their use and mail to assistance eligible individuals. In addition, any assistance eligible individuals who become newly eligible for COBRA due to a qualifying event of involuntary termination or reduction in hours from now through September 20, 2021, will need to be provided with a COBRA election notice that includes the act's requirements.

Once the Departments release model notices and implementation guidance, employers should work with their advisors to modify their current COBRA forms to incorporate the act's provisions. Because the availability of the COBRA subsidy may be highly subsidized, we also recommend employers have a holding statement prepared to respond to questions from employees and former employees pending the release by the Departments of model notices and guidance.

Your Key Contacts



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