



American Rescue Plan Act Mandates Temporary Subsidy of COBRA Premiums and Provides 100% Tax Credit

Among its many employment-related provisions, the American Rescue Plan Act of 2021 (ARPA) provides that if an individual's qualifying event for Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage is an involuntary termination or reduction in hours ("eligible individual"), then 100% of the COBRA premium shall be paid by the entity to which COBRA premiums are due (the employer, health plan or insurer) between April 1 and September 30 of 2021. The COBRA subsidy is available for eligible individuals who are enrolled in COBRA as of April 1, 2021, or enroll between April 1 and September 30 of 2021. In addition, the subsidy is available to any individual who would otherwise be an eligible individual (including a former employee) within the 18-month COBRA coverage period, but who did not elect COBRA coverage or dropped COBRA coverage before April 1, 2021. Such individuals must receive notice of their extended opportunity to elect COBRA coverage. ARPA also requires that plan sponsors update COBRA notices regarding the availability of the premium subsidy. Failure to provide the required notice will be treated as a failure to comply with the COBRA notice requirements. ARPA directs that the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall provide model notices within 30 days of the law's enactment.

To offset the mandated premium subsidy cost, ARPA provides a federal tax credit for 100% of the premium cost. The required premium subsidy payment also applies to, and the tax credit is also available for, mandated comparable continuation coverage under state law. The premium subsidy ends if the individual becomes eligible for another group health plan or Medicare.

In light of the temporary COBRA premium subsidy required by ARPA, employers, health plans and insurers should make certain that they update their COBRA notices as mandated, provide those notices to all individuals and take all other steps necessary to implement the subsidy's requirements. Employers should particularly keep in mind that during the time the COBRA premium subsidy is required (April through September 2021), agreeing to pay for COBRA premiums in a severance agreement is unlikely to be deemed valid consideration for the employee's promises in the agreement because the payments are required by law.

Additional Assistance

For further assistance, please contact any of the attorneys on our [Labor & Employment Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■



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