



ALERTS

Immediate COBRA Premium Subsidy Kicks In April 1 For Involuntarily Terminated Or Reduced Hour Employees

March 30, 2021

Highlights

Employees covered by a group health plan who lose coverage due to involuntary termination of employment (without gross misconduct) or an involuntary reduction in hours may be eligible for a COBRA premium subsidy for up to six months

The employers who pay the COBRA premium subsidy receive a tax credit for the subsidies as part of American Rescue Plan Act

New notices are required in some instances as soon as May 30, 2021

Starting April 1, 2021, employers who sponsor group health plans, both self-funded and fully insured, will need to pay for the entire cost of the group health plan COBRA continuation coverage (COBRA premium subsidy) for a period of up to six months if an employee was involuntarily terminated from employment (without gross misconduct) or lost coverage due to an involuntary reduction in hours and is still within the COBRA continuation coverage maximum period. The employer, however, may receive a tax credit in the amount of the COBRA premium subsidy. The

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subsidy and related tax credit are provisions under the American Rescue Plan Act, which was signed into law on March 11, 2021.

The COBRA premium subsidy generally applies to medical, dental and vision insurance, but not to contributions to health care flexible spending accounts. Before May 31, 2021, the employer will need to provide notice to eligible individuals of this subsidy and an extended COBRA coverage election period.

COBRA Premium Assistance Eligibility

The COBRA premium subsidy is available to qualified beneficiaries who:

- are (or were) eligible for COBRA continuation coverage due to involuntary termination (without gross misconduct) or involuntary reduction in hours of the covered employee,
- are within the maximum period of COBRA continuation coverage, and
- elect the COBRA continuation coverage.

For qualified beneficiaries who lose coverage on or after April 1 and before Sept. 30, 2021, the COBRA premium subsidy must be provided on a prospective basis. For qualified beneficiaries currently enrolled in COBRA continuation coverage, the employer would stop collecting the COBRA premiums starting April 1, 2021, start the COBRA premium subsidy and continue the COBRA coverage through the end of the periods explained below. For qualified beneficiaries who initially did not elect or have not yet elected COBRA continuation coverage or who ended the COBRA coverage before the end of the maximum period and are still in the maximum period of COBRA coverage, employers will need to offer the opportunity to elect COBRA continuation coverage and provide a notice of the extended COBRA continuation coverage election period, as well as the COBRA premium subsidy.

The qualified beneficiaries will have a 60-day election period from the date the required notice is provided to them to elect COBRA continuation coverage on a prospective basis – going into effect April 1, 2021. This subsidy, however, does not extend the COBRA continuation coverage maximum period for qualified beneficiaries.

For purposes of the subsidy, qualified beneficiaries include the covered employee, spouse and dependents who lose coverage.

For those who elect the COBRA continuation coverage, the coverage and the COBRA premium subsidy will need to begin on April 1, 2021, or on the first period of coverage starting on or after April 1. The COBRA premium subsidy for these qualified beneficiaries will end on the earliest of the following:

- Sept. 30, 2021
- The last day of the month in which the individual is eligible for any other group health plan (other than excepted benefits, a health care flexible spending account or a qualified small employer health reimbursement

arrangement), or Medicare

- The date following the expiration of the applicable maximum period of COBRA continuation coverage that would have been required if coverage had been elected or had not been discontinued

The COBRA continuation coverage elected by these qualified beneficiaries will need to continue through the end of the coverage period that would have been required under the applicable COBRA provision. This means, although the COBRA premium subsidy ends on Sept. 30, 2021, the qualified beneficiary may continue the COBRA coverage and pay any required premiums through the end of the maximum period.

For example, if employees covered by the group health plan were involuntarily terminated due to a reduction in the workforce on Oct. 30, 2020, and the group health plan coverage ended on Oct. 30, 2020, (qualifying event), those employees and their dependents who were covered by the group health plan would still be within the 18-month maximum period of COBRA continuation coverage related to the termination of employment. The terminated covered employees and their covered dependents would be eligible for the COBRA premium subsidy starting on April 1, 2021.

If they are not enrolled in COBRA continuation coverage, they will need to be offered the opportunity to enroll in COBRA coverage as of April 1, 2021. Unless these individuals become covered by another qualifying group health plan or Medicare, the COBRA premium subsidy would continue through Sept. 30, 2021. After Sept. 30, these qualified beneficiaries may continue the COBRA coverage without the COBRA premium subsidy (and by paying the COBRA premiums) until April 30, 2022, which is the end of the 18-month period, the maximum COBRA continuation coverage period for a termination of employment qualifying event.

Type of Group Health Plan Coverage

The type of group health plan coverage offered to these individuals will need to be the same group health plan coverage in which the employee was enrolled as of the date of the qualifying event, or the employer may allow – but is not required to allow – the individual to enroll in coverage under a plan offered by the employer to similarly situated active participants that is different from the coverage in which the individual was enrolled as of the qualifying event and the premium for the different coverage is less than the premium for the other coverage.

The different coverage may not be a health care flexible spending account, only excepted benefits, or a qualified small employer health reimbursement arrangement. If an employer decides to offer the different coverage to these individuals, the individuals may have 90 days to elect the coverage after the required notice is provided.

Required Notices

New notices are required under the American Rescue Plan. The administrator for the group health plan will need to provide a notice to the

qualified beneficiaries who are eligible for the COBRA premium subsidy and the extended election period containing specific content by May 31, 2021. In addition, the election notices provided to individuals who become qualified beneficiaries during the period from April 1, 2021 to Sept. 30, 2021, will need to explain the availability of the COBRA premium subsidy and if implemented by the plan, the option to enroll in different coverage. Finally, no later than 15 days before (and no earlier than 45 days before) the date the COBRA premium subsidy will end, the plan administrator will need to provide a notice explaining when the COBRA premium subsidy will end and that the individual may be eligible to continue the COBRA coverage without the COBRA premium subsidy. The Department of Labor will be issuing model notices for use by plan administrators.

The qualified beneficiaries who are receiving the COBRA premium subsidy from a plan and who become eligible for another group health plan or Medicare are required to notify the plan of such eligibility. A \$250 penalty may apply for a failure to notify the plan.

Tax Credit for COBRA Premium Subsidy

Employers may receive a tax credit against the employer portion of Hospital Insurance/Medicare tax (1.45% of wages) in the amount of COBRA premium subsidy paid by employer for the calendar quarter. However, in the case of fully insured group health plans where the insurance company is providing the COBRA coverage, the insurance company, rather than the employer, may qualify for the credit.

Other Considerations

There are some unanswered questions stemming from American Rescue Plan. For instance, it references an involuntary termination or involuntary reductions in hours, but the definition of gross misconduct was not changed or clarified under the new law. Additionally, it is not clear if the COBRA premium subsidy must be made available to those who were eligible for COBRA coverage on account of a longer COBRA period – namely, a 29-month period for disabled employees or a 36-month period for those who have incurred a second qualifying event, but the initial qualifying event was an involuntary termination of employment (without gross misconduct) or an involuntary reduction in hours.

Action Steps

- Employers will need to identify those employees who were involuntarily separated within the last 17 months and who were covered by the group health plan as of their termination date.
- If the plan uses a COBRA administrator, the employer may wish to reach out the COBRA administrator to coordinate efforts for distributing the new notices.
- As the Department of Labor will be issuing model notices related to the COBRA premium subsidy and extended election period, employers will need to look for those model notices.

- Plan administrators will need to update current COBRA election notices for the COBRA premium subsidy provisions.
- Plan sponsors will need to work with insurance providers (including for stop-loss coverage) to address administration and premium-related matters for the COBRA subsidy period.

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