

Availability of Health Insurance Subsidy Requires

COVID-19 Response Resource Center: Timely Counsel for your Business

By Melissa Weaver on 04.16.2021

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On March 11, 2021, President Biden signed the American Rescue Plan Act (“ARPA” or the “Act”), another piece of the federal government’s response to the COVID-19 pandemic. Among other things, the Act provides premium assistance for eligible employees and their family members who elect continuation coverage under COBRA or a state’s mini-COBRA law and continue health insurance benefits under those laws. The premium assistance is available for coverage between April 1, 2021 and Sept. 30, 2021. Employees pay nothing for their coverage during this time, and employers are reimbursed for the amount of premium assistance provided through a credit against their payroll taxes. In order to be eligible for the subsidy, an employee and their dependents must become eligible for continuation coverage due to the employee’s involuntary termination of employment or a reduction in hours that results in a loss of coverage under the employer’s group health insurance plan. Notably, there is no requirement that the termination or loss of coverage be related to COVID-19.

On April 7, 2021, the Department of Labor released FAQs about the COBRA premium assistance benefit, as well as several model notices that can be used by employers to meet the Act’s notice requirements.

Key Points for Employers:

- **Notice to employees is required:** Notice is required for those who qualify between April 1, 2021 and Sept. 30, 2021, and also for those who had a COBRA-qualifying event before April 1, 2021. Model notices and FAQs from the Department of Labor are linked here. Currently eligible individuals are to be provided notice on or before May 31, 2021.
- **Eligibility for COBRA subsidy is broad, but has limits:** Those who meet the following are eligible for the subsidy:
 - Are otherwise eligible for COBRA continuation coverage due to an employee’s reduction in hours for any reason or are eligible for COBRA continuation coverage due to an employee’s involuntary termination of employment (not including a termination for gross misconduct such that COBRA coverage would not be available); and
 - Elect COBRA continuation coverage within 60 days of receiving the election notice.

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The premium assistance is not available where an employee's termination of employment is voluntary or due to the employee's death or where a dependent ages out of eligibility for the health plan. In addition, employees who are eligible for other group health coverage are not eligible for premium assistance benefits. However, those who have individual policies, such as through the Health Insurance Marketplace, may be able to elect COBRA and move back to the employer's plan instead, although doing so will make them no longer eligible for a premium tax credit, advance payments of the premium tax credit, or the health insurance tax credit for health coverage during that period.

- **Duration of assistance is limited:** The subsidy ends Sept. 30, 2021 or earlier if the covered individual is eligible for other coverage. Individuals are required to notify the plan administrator of their eligibility for other coverage or face a penalty of \$250 (more if failure to notify is fraudulent).
- **There's an option to allow switch to new health plans:** Employers *may*, but are not required to, allow individuals eligible for premium assistance to switch to a new medical plan option with a cost no more than their current option. Essentially, this allows individuals eligible for premium assistance to have a new open enrollment period, if the employer wants to provide it. However, it does not allow individuals to "buy up" to a more expensive plan option than they had at the time of their qualifying event and get it for free. If offered, the Act requires the employer to provide eligible individuals with notice of this option, and gives them 90 days to elect to change medical options following receipt of the notice.
- **"Do Over" available for employees who previously rejected or dropped COBRA coverage:** A qualified beneficiary who was eligible to elect COBRA due to an employee's reduction in hours or involuntary termination of employment prior to April 1, 2021, but who did not do so, or who elected COBRA continuation coverage but dropped it, may have an additional election opportunity under the Act. However, this additional election period does not extend the period of COBRA continuation coverage beyond the original maximum period (generally 18 months from the employee's reduction in hours or involuntary termination). This new period of continuation coverage can begin no earlier than April 1, 2021 (a retroactive election is permitted), or individuals can begin their coverage prospectively from the date of their election. In either case, the premium assistance is only available for periods of coverage from April 1, 2021 through Sept. 30, 2021. If coverage extends beyond Sept. 30, 2021, it will be at the qualified beneficiary's expense.
- **Subsidy is available for state continuation coverage:** Premium assistance is generally available for continuation coverage through state continuation coverage (mini-COBRA) laws.

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Reach out to the Brooks Pierce Labor and Employment team with any questions and especially if you need help figuring out:

- What notices and communications you need to provide;
- Which individuals are eligible and need to receive notices;
- Whether to allow the option to switch plans;
- What updates are needed to your COBRA election forms; or
- How to comply under state continuation without a COBRA vendor to help.

Tags: American Rescue Plan