

NEW COBRA PREMIUM SUBSIDY; EMPLOYER NOTICE REQUIREMENTS

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A new 100% subsidy to pay COBRA premiums for former employees electing continued health care coverage has been signed into law by President Biden as part of the American Rescue Plan Act (“ARPA”). This legislation is designed to assist employees (and COBRA-eligible former employees) and employers to pay for health care in the wake of the pandemic. Notably, ARPA imposes numerous notice and other administrative requirements on employers.

KEY POINTS

- ARPA provides for a 100% COBRA premium subsidy for the period [April 1, 2021, through September 30, 2021](#) for certain eligible employees and former employees who elected continuation coverage under COBRA, and provides a second chance “opt in” for employees who did not initially elect COBRA or later dropped it.

- Employers are responsible for paying the premium subsidies but will be repaid through a refundable tax credit.
- Employers must comply with multiple notice requirements for eligible former employees during the premium subsidy period.
- Several notice requirements must be satisfied by **May 31, 2021**.

WHO IS ELIGIBLE?

Any person eligible to receive this subsidy is referred to in the new law as an “Assistance Eligible Individual” or “AEI.” An AEI is any COBRA-qualified beneficiary whose COBRA-subsidy qualifying event was due to involuntary termination, lay-off, or reduction in hours, and who is not eligible for coverage on any other group health plan, including a new employer’s group health plan or a spouse’s employer’s group health plan. An employee who voluntarily quits, retires, or is

terminated for cause is not eligible to receive the subsidy.

HOW DOES THE SUBSIDY WORK?

The subsidy covers the total cost of an AEI's COBRA premiums for the six-month period from April 1, 2021, through September 30, 2021, for a single person or family medical, dental, and vision plans. Eligible recipients pay nothing. Employers (or, in some cases, insurers) are reimbursed for the subsidy payment through a credit against their Medicare FICA payroll taxes. If an AEI mistakenly pays premiums during the ARPA subsidy period, a refund must be issued within 60 days.

ARPA does not lengthen the 18-month period during which COBRA coverage is provided. For example, if someone's 18 months of COBRA coverage is scheduled to end on July 31, 2021, the individual's status as an AEI does not extend that date. However, ARPA gives some individuals a "second chance" to re-elect COBRA coverage in certain situations, including AEIs whose 18-month COBRA coverage

period has not yet concluded, but did not elect COBRA coverage or elected initially but subsequently discontinued coverage.

DO THE RULES APPLY TO SMALL EMPLOYERS OR GOVERNMENTAL ENTITIES?

Yes. ARPA subsidies are available to any AEI who was enrolled in a plan sponsored by small employers that comply with state mini-COBRA rules or state, local or governmental entities subject to the COBRA rules under the Public Health Service Act.

WHAT ARE AN EMPLOYER'S NOTICE REQUIREMENTS?

Employers are required to provide three types of notices under ARPA's COBRA premium subsidy program. (In many cases, an employer's plan administrator will send out these notices, but employers would be wise to check to make sure.) Failure to provide the required notices subjects an employer (or former employer) to significant penalties.

First, employers are required to inform AEIs and their qualified beneficiaries that they may be entitled to the subsidy and have the option to enroll. This notice must be sent by **May 31, 2021**, to individuals who are currently enrolled in COBRA continuation coverage and those who become eligible to elect COBRA during the period beginning on April 1, 2021, and ending on September 30, 2021.

Second, employers are also required to send notice by **May 31, 2021**, to AEIs and their qualified beneficiaries who elected but discontinued COBRA continuation coverage before April 1, 2021, or did not elect COBRA in the first place but whose coverage period has not ended.

Third, notice must be provided to AEIs between 45 and 15 days before the date on which an individual's subsidy will expire reminding them of the expiration date.

The Department of Labor has published several helpful model notices. [Click here to view model notices in Word or pdf format.](#)

Do not hesitate to contact **Tom Herman** at **therman@SmithDuggan.com** or **617-228-4415**, or any other member of the firm if you have any questions or seek further guidance on this issue.