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Employers Should Begin Planning for COBRA Subsidy

The American Rescue Plan Act ("ARPA"), signed into law on March 11, 2021, obligates employers to pay COBRA insurance premiums for individuals who suffer job loss. Under the plan, employers receive the subsidy, which they pass along to COBRA enrolled former employees, through a payroll tax credit on quarterly Medicare taxes. **The subsidy period is April 1 to September 30, 2021**, and both fully insured and self-insured group plans are eligible for the credit.

WHO QUALIFIES: Employers are required to provide the free coverage to employees/former employees identified as assistance-eligible individuals ("AEIs") who experience involuntary termination (lay-off) or a reduction of hours (other than for gross misconduct) and their covered relatives. AEIs include: (1) those who become eligible for and elect COBRA during the subsidy period, and (2) those who became eligible for COBRA but either did not elect it or elected it but discontinued the coverage prior to April 1, 2021. The latter group is provided a second opportunity to elect COBRA coverage, which ends 60 days after notice of the election opportunity is provided to the AEI by the plan administrator. (Look for model language regarding this group from the Department of Labor soon.) If the COBRA event occurred before April 1, 2021, coverage will end 18 months after eligibility for COBRA.

WHAT IS COVERED: The subsidy covers premiums for group plans subject to COBRA mandates, including medical, dental and vision plans (and any other plans required by state law). Note that employers may allow AEIs to select a coverage different from the one in place when they first became eligible for COBRA, as long as:

- the premium for the other coverage is equal or less than the premium for the prior coverage;
- the alternate is also available to similarly situated employees; and
- the alternate includes more than excepted benefits, such as dental and vision.

EXPIRATION: The subsidy will expire on whichever of the following dates is earliest:

- September 30, 2021;
- expiration of the AEI's ordinary COBRA coverage (18 months after termination or reduction in hours); or
- the date the AEI becomes eligible for coverage under another plan or Medicare.

Questions? Contact Stokes Wagner.

If the AEI becomes eligible under another plan, they must notify the plan administrator or be subject to a fine.

WHAT EMPLOYERS SHOULD DO:

1. Identify those who were laid off or experienced a reduction in hours and are within the 18-month COBRA period. Determine whether other coverage options will be permitted at the same/lower cost. The notice should describe the subsidy and, if permitted, the opportunity to enroll in an alternative coverage. For AEIs who became eligible for COBRA prior to April 1, 2021, the **notice must be given by May 31, 2021**. For those who become eligible after April 1, 2021, employers should give notice at the time COBRA election notices are typically provided. The Department of Labor is set to issue a model election notice by April 12.

2. Adjust payroll administration to show the COBRA subsidy, including AEIs and the amount of subsidy.

3. Track premiums to claim the tax credit. If the credit amount exceeds the quarterly Medicare tax, the excess will be treated as a refundable overpayment. The premiums paid by the employer will be excluded from the former employee's gross income.

4. Plan to provide notice of expiration to AEIs at least 15 days and not more than 45 days before any COBRA premium payment subsidy ends, unless the AEI has obtained other group health plan coverage. Note that eligibility may end earlier if the qualified beneficiary's maximum period of coverage ends before September 30, 2021, or if the beneficiary becomes eligible for coverage under another group health plan or Medicare.
