

**BenefitsBCLP**

## **100% COBRA SUBSIDY FROM APRIL 1, 2021 UNTIL SEPTEMBER 30, 2021**

Mar 25, 2021

The American Rescue Plan Act of 2021 (“ARPA”) provides that, for the period from April 1, 2021 until September 30, 2021, if an individual’s Consolidated Omnibus Budget Reconciliation Act (“COBRA”) qualifying event is an involuntary termination of employment or a reduction of hours (each, an “assistance eligible individual”), then 100% of the COBRA premium is paid by the employer, health plan, or insurer and the premium expense is reimbursed by the federal government through a refundable FICA tax credit. For an insured or self-insured plan, the employer applies for the tax credit; however, a multiemployer plan will apply direct for the tax credit.

The subsidy is available for both assistance eligible individuals as well as their dependents electing COBRA, but is not available for anyone who voluntarily ends their employment. The subsidy will end on the earliest of (1) the expiration of the assistance eligible individual’s maximum 18-month COBRA period, (2) the individual’s eligibility for another group health plan or Medicare, or (3) September 30, 2021 (when the temporary subsidy under ARPA ends).

The termination of employment or reduction of hours may have occurred prior to the effective date of ARPA. A new 60-day election period is created for individuals who had an involuntary termination of employment or reduction in hours within the last 18 months and did not timely elect COBRA or dropped COBRA coverage. The election period begins on the date that the individual receives the new COBRA notice.

An employer may elect to permit assistance eligible persons to change their election to other plan options that have the same or lower cost premiums. Employers must update COBRA notices previously sent to individuals eligible for the subsidy to describe the subsidy and the ability to elect different coverage (if permitted by the employer) and issue extended COBRA election notices to assistance eligible individuals entitled to elect COBRA prior to April 1, 2021 by no later than May 31, 2021. Failure to issue these notices will be treated as a failure of COBRA’s notice requirements. ARPA directs the Department of Labor to publish model notices for employers to utilize for the COBRA subsidy by April 11, 2021.

There are many unanswered questions about compliance with this new law – particularly how it is impacted by the tolling period requirements for COBRA elections and payment under EBSA Disaster

Relief Notice 2021-01; how to determine whether a termination was “voluntary”; and the circumstances in which other coverage disqualifies the assistance eligible individual from subsidy eligibility. In addition, there are open questions regarding an employer’s potential liability for underwithholding penalties and interest in the event the IRS disagrees with the employer’s application of the COBRA subsidy provisions. Additional guidance implementing the COBRA subsidy provisions is expected and will hopefully include relief from penalties for good faith compliance – and be issued in time to facilitate timely compliance.

Effective Date: April 1, 2021

Action Steps:

1. Identify COBRA qualified beneficiaries who are assistance eligible individuals;
1. Reach out to “recently” terminated employees who did not elect COBRA coverage but who are now eligible for subsidized coverage; and
2. Update COBRA notices and prepare notices addressing the new requirements (as noted, the DOL model is due by April 11, 2021).

**RELATED PRACTICE AREAS**

- Employee Benefits & Executive Compensation

## MEET THE TEAM



### **Lisa A. Van Fleet**

St. Louis

[lisa.vanfleet@bclplaw.com](mailto:lisa.vanfleet@bclplaw.com)

[+1 314 259 2326](tel:+13142592326)



### **Stephen J. Evans**

St. Louis

[steve.evans@bclplaw.com](mailto:steve.evans@bclplaw.com)

[+1 314 259 2387](tel:+13142592387)

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