

New Guidance Requires Employers to Notify Individuals About COBRA Subsidy

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Labor & Employment at Much

As we reported in our previous article, the [American Rescue Plan Act](#) provides a subsidy for assistance eligible individuals (AEIs) who lose health insurance coverage under their employers' group plans as a result of a reduction in hours or involuntary termination of employment and receive continuation coverage under COBRA between April 1, 2021, and September 30, 2021. The U.S. Department of Labor (DOL) recently provided guidance that includes a detailed description of plan sponsor notification requirements, as well as model notices to be sent to eligible individuals regarding the availability of the subsidy.

Certain notices must be provided by May 31, 2021, so employers should be taking steps as soon as possible to meet the deadlines.

Below is a summary of some of the DOL's important clarifications regarding ARPA requirements, as well as the notice requirements.

Changes in Coverage

The guidance includes a description of the interaction between health insurance marketplace coverage and eligibility for subsidized COBRA.

- AEIs who have marketplace coverage may drop such coverage in order to elect subsidized COBRA coverage. While receiving subsidized COBRA coverage, AEIs will not be eligible for any premium tax credits or advance premium payments they would otherwise receive for their marketplace coverage.
- The guidance implies but does not definitively state, that AEIs will have a special enrollment period to sign up for marketplace or other individual coverage when subsidized COBRA coverage ends.

Requests for Subsidies

The guidance includes a form that employees can submit to their employers if they believe they

qualify as an AEI but do not receive notice of their eligibility for subsidized COBRA.

Notice Requirements and Penalties

The DOL's guidance includes a detailed description of the notice requirements imposed under ARPA, as well as model notices for use by employers that sponsor group health plans, including medical, dental, and vision plans. For purposes of the chart below, an "eligible event" refers to any reduction in hours or involuntary termination that qualifies as a COBRA event.

Notice	Recipient	Deadline	Notes
Model ARP General Notice and COBRA Continuation Coverage Election Notice	Any AEI with an eligible event between April 1, 2021, and September 30, 2021	60 days from eligible event	The DOL provided a separate model notice for small employers that are subject to state continuation laws.
Model COBRA Continuation Coverage Notice in Connection with Extended Election Periods	Any AEI with an eligible event between October 1, 2019, and March 31, 2021, regardless of whether the AEI elected COBRA coverage at that time	May 31, 2021	An AEI has 60 days following the date of the notice to elect to receive subsidized COBRA.
Notice of Expiration of Period of Premium Assistance	Any AEI receiving subsidized COBRA coverage	Between 15-45 days before the later of the end of the AEI's COBRA coverage period or September 30, 2021	Notice is not required if the subsidy ends because other coverage becomes available to the AEI.

The DOL stated in the guidance that it may assess a penalty of as much as \$100 per AEI (\$200 maximum per family) for each day that an employer is in violation of the notice requirements.

Action Items

In addition to the action items outlined in our [previous article](#), employers should take the following steps to avoid any penalties for failure to comply with ARPA's requirements:

- Whenever possible, use the DOL's model notices.
- Provide updated general COBRA notices with information about the subsidies to AEIs who became eligible for COBRA coverage on or after April 1, 2021.
- Make arrangements to refund COBRA premiums paid by AEIs who elect and/or receive COBRA coverage after April 1, 2021.
- Be on the lookout for any requests for subsidies. Require any potential AEIs to use the DOL's model form.
- Consider whether to claim the payroll tax credit for COBRA coverage for which you are paying under the terms of a severance plan or separation agreement. As of now, there is no direct guidance on this issue.

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