

# HRW CLIENT ALERT

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## New COVID Stimulus Package Contains 6-Month COBRA Subsidy: Employers Pay, Receive Tax Credit

The American Rescue Plan Act of 2021 (“ARPA”), the \$1.9 trillion COVID relief bill passed by Congress and signed into law by President Biden on March 11, 2021, contains a number of benefits for American workers that their employers will need to understand. Among these is the inclusion of subsidized COBRA coverage for employees (and their family members) who experience a loss of group health coverage due to reduced hours of employment or involuntary termination of employment. Importantly, COBRA premiums are to be paid by employers who will be reimbursed via a tax credit on their quarterly payroll taxes. As discussed below, this ARPA provision introduces considerable administrative challenges for employers, although additional regulatory guidance is likely to be offered in the coming weeks.

### **Who is Eligible for ARPA COBRA Subsidy?**

The ARPA COBRA subsidy covers two categories of “Assistance Eligible Individuals.” First, any covered employee who becomes eligible for COBRA continuation coverage due to a qualifying termination is eligible for ARPA subsidized COBRA. Qualifying terminations are limited to involuntary terminations of employment or a reduction in hours significant enough to trigger a loss of coverage.

Second, the subsidy is also available *to individuals who previously became eligible for COBRA coverage and are still within their maximum coverage period*. This could include individuals who were involuntary terminated as early as November 1, 2019. In this scenario, individuals previously eligible for coverage but not currently enrolled because they waived COBRA or elected COBRA and subsequently dropped it, may enroll for coverage to take advantage of the subsidy. This second bite at the apple is available only beginning April 1, 2021 and ending 60 days after the eligible individual receives notice of the availability of the subsidy (the “Special Enrollment Period”). Employers’ notice obligations are covered in more detail below.

### **How Long Does the Subsidy Last?**

The ARPA COBRA subsidy is available for a six-month period from April 1, 2021, to September 30, 2021 (the “Subsidy Period”). But the ARPA *does not extend* the normal 18-month period of COBRA coverage. For instance, an Assistance Eligible Individual who has already had COBRA coverage for 16 months on April 1, 2021 will only be eligible for the ARPA COBRA subsidy for 2 months—not until

September 30, 2021. Similarly, anyone electing COBRA during the Special Enrollment Period will be covered beginning on April 1, 2021, but their COBRA coverage will not continue past the date that their maximum COBRA coverage period would have otherwise expired if they had elected COBRA when originally available. For example, a former employee who lost coverage on February 15, 2020, but did not elect COBRA coverage, could enroll during the Special Enrollment Period and be covered through August 15, 2021. The Subsidy Period will also end if the Assistance Eligible Individual becomes eligible for coverage under another group plan or Medicare.

### **What Does This Mean For Employers?**

First, because the ARPA requires health plan sponsors to provide notice of the subsidy and the Special Enrollment Period, employers will need to identify Assistance Eligible Individuals. This means that employers will not only need to provide COBRA election paperwork to individuals who become eligible during the Subsidy Period, but they will also need to identify and notify individuals who experienced a qualifying termination during the last 18 months and who may be eligible to enroll during the Special Enrollment Period. Employers must also provide notice of the expiration of subsidized coverage. The federal government is expected to issue a model notice, for employers' use, within the next 30-days, but employers should immediately begin the process of identifying Assistance Eligible Individuals.

Second, employers are obligated to provide this subsidized COBRA coverage and must pay the Assistance Eligible Individual's premium. But employers can then claim a credit for those premiums against their quarterly Medicare payroll tax. The credit can be advanced and is refundable, so an employer could claim a refund if the premiums paid exceed the taxes due. Therefore, employers will be well-served to carefully monitor, in conjunction with their COBRA administrators, precisely how many Assistance Eligible Individuals took advantage of the ARPA COBRA subsidy, and for how many months, so that they are prepared to file for reimbursement through a quarterly payroll tax credit. Again, federal agencies are expected to issue further guidance on this process in the coming weeks.

Finally, employers should ask for help in interpreting the COBRA subsidy and how it may affect your business or organization. Like any new legislation, interpretations of its implications will be evolving, especially as federal agencies begin to roll out specific guidance.

### **For Questions/Compliance Assistance**

If you have any questions about this COBRA subsidy and its potential impact on your business or organization, please contact:

- Sam Gates ([sgates@hrwlawyers.com](mailto:sgates@hrwlawyers.com) / 617-348-4346);
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- Any member of the [HRW Team](#) to discuss your particular situation.