



## Show Notes – Important Slides

# The American Rescue Plan Act (ARPA) 2021 and Changes to the Outbreak Period (Notice 2021-01)

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March 30, 2021 & Updated April 7, 2021 With ARPA COBRA  
Model Notices

# Your Presenters



# EBSA Disaster Relief Notice 2021-01

- Individuals and plans with timeframes that are subject to the relief under the Notices will have the applicable periods under the Notices disregarded until the earlier of (a) 1 year from the date they were first eligible for relief, or (b) 60 days after the announced end of the National Emergency (the end of the Outbreak Period). **In no case will a disregarded period exceed 1 year.**
- On the applicable date, the timeframes for individuals and plans with periods that were previously disregarded under the Notices will resume.
- **Example:** QB would have been required to make a COBRA election by 3/1/20, that requirement is delayed until 2/28/21
- **Example:** QB would have been required to make a COBRA election by 3/1/21, that requirement is delayed until 3/1/22 (unless the national emergency ends before then)
- **Example:** Plan must provide a notice by 3/1/20. The plan fiduciary must provide the notice by 3/1/21



# Changes to the Outbreak Period (Notice 2021-01)



- On February 26, 2021, the DOL issued Notice 2021-01
- Under the new notice, the one-year limitation provides the ability to ***extend the deadlines through regulatory action to basically apply on an individual-by-individual basis!***
- DOL interprets the Tolling Period to end the earlier of one year from the date the deadline would have begun running for that individual or 60 days from the end of the National Emergency. As we all know, the national emergency has not yet ended.
- Every person has his or her own “tolling period.”
  - *the extension begins on the date that the clock would have started for a particular deadline, on a rolling basis.*

# COBRA Subsidies: Scenarios

- Alpha Corp. is located in Pasadena. In 2020, Alpha had 50 employees; Alpha is subject to COBRA. Alpha offers full-time employees a fully insured health plan.
- During 2020, Taylor works full-time for Alpha as a bookkeeper. Taylor elected and is covered by the health plan. In November 2020:
  - 1) Taylor quits. Taylor is offered COBRA, elects COBRA, and is currently on COBRA.
  - 2) Taylor is terminated for cause. Taylor is offered COBRA, elects COBRA, and is currently on COBRA.
  - 3) Taylor is terminated for cause. Taylor is offered COBRA, elected COBRA, and then let the COBRA coverage lapse at the end of January.
  - 4) Taylor is laid off because Alpha's business is down due to COVID-19. Taylor is offered COBRA but did not elect COBRA.

# If the AEI Does Not Pay the COBRA Premium, Who is Responsible for Payment?

- Multiemployer plans, the plan
- **In a plan that is either subject to COBRA under ERISA, the IRC, or the PHSA, or is self-funded, the employer.**
- If one of these circumstances does not apply, such as a **fully insured group plan that is subject to state continuation coverage laws, the insurer.**
- *If the AEI pays the COBRA premium even though it should have been subsidized, the employer, insurer, or plan must reimburse the AEI within 60 days.*

# Can the Employer Get a Tax Credit For Reimbursement of the COBRA Premiums Paid?

- Yes, the employer, insurer, or plan is entitled to reimbursement of the premium in the form of a federal tax credit against certain quarterly payroll taxes.
- If the credit exceeds the payroll tax liability, a refund will be available.
- Restrictions on double-dipping; ie if employer is receiving a tax credit for qualified health plan expenses because the employer is providing paid leave under the FFCRA, the employer cannot also take this tax credit.

# Are There New Notice Requirements? Yes!

- Modify existing COBRA election notice to send to those who have a qualifying event on/after April 1, 2021
  - Presumably follow typical COBRA notice procedures
- Modify existing COBRA election notice to send to those who have already had a qualifying event but are entitled to extended election period
  - Must be sent by May 31, 2021
- Modify existing COBRA election notice to notify AEIs of plan enrollment option, if employer offers this (more later)
- New Notice: Create notice to send to those whose subsidy is ending
  - Must be sent between 45 and 15 days of end of subsidy
- The DOL is tasked with providing new Model Notices by April 10, except for the notice of expiration of the subsidy, which must be issued by April 25. Notices and FAQs were released on April 7, 2021. Sent to webinar attendees; show notes for podcast listeners.
- Employers should start working with their internal HR staff handling COBRA or their COBRA Administrator to start preparing for the distribution of the new and revised notices!



# Content of Notices

- In clear and understandable language—within text of notice or as an addendum—modify COBRA election notice to explain (a) the availability of premium assistance and (b) the plan enrollment option (if available); specifically, must include:
  - i. The forms necessary for establishing eligibility for premium assistance;
  - ii. The name, address, and telephone number to contact the plan administrator and any other person maintaining relevant information in connection about premium assistance;
  - iii. A description of the extended election period;
  - iv. A description of the obligation of the qualified beneficiary to notify health plan of ineligibility for premium subsidy, and the applicable penalty;
  - v. A prominent description of the QB's right to a subsidized premium and any conditions on entitlement to the subsidized premium; and
  - vi. A description of the option of the qualified beneficiary to enroll in different coverage if the employer permits it.

# Scenario: Notices

- **Example:** Kelly was terminated for cause and Kelly's COBRA coverage would have started on 11/1/19, but Kelly did not elect it. Because Kelly has not exhausted the 18-month maximum COBRA continuation period, Kelly must be offered the opportunity to enroll effective 4/1/21 and receive 1 month of subsidized COBRA coverage (so long as Kelly is not eligible for other group coverage or Medicare)
  - Kelly will receive an updated COBRA election notice
  - Kelly will receive notice that the subsidy is ending

# Scenarios: Notices

- **Example:** For personal reasons, Alex reduces hours worked starting 1/1/21. This results in a loss of coverage effective 1/1/21—a COBRA qualifying event. Alex elects COBRA. Effective 4/1/21, Alex is entitled to 6 months of subsidized coverage (so long as Alex is not eligible for other group coverage or Medicare)
  - Alex will receive an updated COBRA election notice explaining subsidy
- **New Facts:** Alex's COBRA QE takes effect 4/1/21
  - Same result
- **New Facts:** Before receiving new COBRA notice, Alex pays April premium for fully insured coverage
  - Employer must reimburse premium within 60 days (more over)
- **New Facts:** Alex's QE date was 1/1/21. Alex pays January premium, then stops.
  - Alex will receive an updated COBRA election notice
  - Alex can re-start COBRA effective 4/1/21, and it will be subsidized for 6 mos.
  - Under the Outbreak Period rules, Alex has up to 1 year to pay Feb – March premium, if Alex wants coverage for those months
  - In all events, maximum COBRA coverage period is 18 months from 1/1/21

# Scenario: Timeframe Extensions and COBRA Subsidies

- **Example:** Taylor was involuntarily terminated effective 11/30/20; Taylor's health coverage also ended 11/30/20. Taylor was offered COBRA and under typical COBRA rules has 60 days, or until 1/30/21, to elect COBRA. Taylor did not elect COBRA. Taylor is not currently eligible for other group health coverage or Medicare
  - Under the timeframe extensions, Taylor has until 1/30/22 to elect COBRA
  - Under the ARPA COBRA subsidies, Taylor must be provided a new COBRA election notice explaining the COBRA subsidies and the extended election period. Taylor will have 60 days from that notice to elect COBRA (effective 4/1/21), and Taylor's COBRA coverage will then be subsidized through 9/30/21. Taylor's maximum period of COBRA coverage is 18 months (through May 31, 2022)

# How Much Additional Subsidies in Marketplace?

Household Income (Based on % of FPL)	Initial Premium Percentage	Final Premium Percentage
Up to 150%	0.0	0.0
150% - 200%	0.0	2.0
200% - 250%	2.0	4.0
250%-300%	4.0	6.0
350%-400%	6.0	8.5
400% & Above	8.5	8.5

# Tax Credit for Paid Leave

(Section 3131)

- 100% credit for qualified sick leave wages
- Employers are NOT required to provide the leave, but if they do, they can continue to credits
- Time Period April 1, 2021 through September 30, 2021
- Up to \$200 for reasons (from prior FFCRA class and article) 4, 5, 6 or newly added reasons for leave
- Up to \$511 for reasons 1, 2 or 3
- Limit of 10 days

# COVID-19 Supplemental Paid Sick Leave

- **S.B. 95:** Goes into effect 10 days after signed, and applies retroactively to **January 1, 2021**
- Applies to employers (public and private) with more than 25 employees
- Applies to employees who are unable to work or telework due to a qualifying reason
- Full-time employees entitled to up to 80 hours; up to 2 weeks for those who are part-time or work variable hours; specific rules for firefighters
- Total number of hours is in addition to hours allowed under Healthy Workplaces, Healthy Families Act of 2014
- Nonexempt are paid at the higher of rate of pay (using formula) or minimum wage; exempt are paid in usual manner for paid leave; up to limits (\$5,110 aggregate/\$511 day)
- Includes a notice and paystub requirement; poster and FAQs available

# Questions?

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