

New COBRA Coverage Obligations for Employers



By [Scott V. Carroll](#), [Elise M. Edwards](#)

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NOTICE TO EMPLOYERS AND GROUP HEALTH PLANS – NEW COBRA^[1] CONTINUATION COVERAGE OBLIGATIONS AND PREMIUM SUBSIDIES UNDER THE AMERICAN RESCUE PLAN ACT OF 2021

The American Rescue Plan Act of 2021 (Pub. L. 117-2) (“ARPA-21”) that was enacted on March 11, 2021 provides a full premium subsidy to certain eligible individuals for health plan continuation coverage and creates additional continuation of coverage enrollment rights for certain eligible individuals.

The following is a brief summary of the ARPA-21 premium subsidy statutory provisions:

- Certain involuntarily terminated employees, and certain employees that have undergone a reduction in working hours, and their dependents are now eligible for full COBRA premium assistance for periods of continuation

coverage from April 1, 2021, through September 30, 2021.

- Qualified beneficiaries include any individuals who are terminated from employment on or after April 1 through September 30 as well as any individuals who were terminated prior to April 1 but have or were eligible to have (but did not elect) COBRA coverage for all or any part of the period running from April 1 through September 30.
- The continuation of coverage premium subsidy is not available for individuals whose employment is or was terminated for cause or are or become eligible for coverage through new employer group health plans.
- Although COBRA continuation of coverage rules only apply to employers with 20 or more employees generally, the new statutory provisions also apply to governmental employees that are eligible to receive continuation coverage pursuant to the federal Public Health Services Act and to enrollees that are subject to state mini-COBRA statutes (which in New York generally applies to employers with fewer than 20 employees).
- Covered employers are required to provide notice to assistance eligible individuals. *The first deadline for issuing notices to assistance eligible employees is May 31.*
- The premium relief is subsidized through credits for Medicare payroll taxes that are paid by employers for the relief period.

The U.S. Department of Labor (“DOL”) has recently issued model notices and frequently asked questions documents on its website that are available at [COBRA Premium Subsidy | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/ebsa/press/20200429-cobra-premium-subsidy). The DOL and the Internal Revenue Service are authorized to issue regulations outlining employer COBRA-related obligations and the IRS is also authorized to issue regulations covering the employer and individual credits and exemptions associated with the premium relief. Employers or multiemployer plans may also be subject to an excise tax under the Internal Revenue Code for failing to satisfy the additional COBRA continuation coverage requirements as modified by these provisions.

The APRA-21 COBRA premium assistance provisions create additional obligations for employers related to COBRA continuation of coverage and will require prompt action and coordination with employer service providers (such as payroll processing companies, professional employer organization and third party administrators) in order to ensure compliance. In addition, employers and their payroll processors and agents will need to appropriately complete filings with the IRS associated with the premium credits based on expected IRS guidance and regulations.

For questions related to the COBRA Premium Assistance obligations, please contact Scott Carroll, Frank Fanshawe or Elise Edwards.

[1] COBRA continuation coverage refers to continuation of health care coverage requirements that were established in the Employee Retirement Income Security Act of 1974 (“ERISA”) and the Internal Revenue Code pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”).