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## **Employers Should Act Now:** **Notice Requirements for the COBRA Subsidy in the ARPA**

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On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law, which provides a COBRA premium subsidy for eligible individuals for a limited period of time. Under the ARPA, employers must cover 100% of the eligible employee's cost of continued group health coverage under COBRA from April 1, 2021 through September 30, 2021. Employers are then reimbursed for the cost through a tax-credit. As a result, employers are now required to send out new COBRA notices to all eligible employees.

### **Eligibility**

Employees who lost coverage due to a reduction in hours or involuntary termination and elect COBRA continuation may be eligible for the subsidy. Employees who voluntarily terminated employment or were terminated for gross misconduct are not eligible. The definition of "gross misconduct" however, is a very strict standard. Therefore, prior to disqualifying employees due to termination for "gross misconduct," employers should review the facts with legal counsel to determine whether the conduct meets the standard. Eligible employees and covered dependents who are already enrolled in COBRA, did not elect COBRA when it initially became available, or elected COBRA initially but let coverage lapse are eligible to receive the COBRA subsidy.

### **Time Period**

The subsidy period is only six months, between April 1, 2021 and September 30, 2021. The subsidy period is only available to those whose initial COBRA period ends either during or after this six-month period. The subsidy does not lengthen the COBRA period, so if an individual's 18-month COBRA period begins after April 1, 2021 or ends before September 30, 2021, the subsidy period will be shorter than six months.

For example, if an employee was terminated on February 1, 2020 and became eligible for COBRA coverage on March 1, 2020, the employee's 18-month COBRA period would end on August 31, 2021, so the subsidy would only be available to the employee for five months.

### **Employer Tax-Credit**

Although employers must front the COBRA premium, the federal government will make employers whole by providing a dollar-for-dollar tax credit to the employer. Insured and self-insured plans subject to COBRA and self-funded and insured plans not subject to COBRA but subject to continuation coverage under state law are included.

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## Notice Requirements

Employers and their benefit providers and third-party administrators should identify eligible individuals and provide notice about the new benefit. On April 7, 2021, the Department of Labor issued model notices available [here](#). The new notice must be provided to all eligible employees, even those that did not previously elect COBRA. Therefore, employers must review all employees involuntarily terminated or suffered a reduction in hours resulting in a loss of benefits prior to April 1, 2021 and send the new COBRA notice. The notice must be sent to eligible employees by plan administrators by May 31, 2021.

Employers should be mindful of the notice requirements related to the subsidy and ensure it identifies eligible former employees. Employers should contact legal counsel to ensure compliance with the Act.

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