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American Rescue Plan Act -- COBRA strikes

By Zan Blue
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The American Rescue Plan Act has made some important changes to the obligations of employer-sponsored health plans under the Consolidated Omnibus Budget Reconciliation Act, better known as COBRA.

If an individual became or becomes eligible for COBRA because of an involuntary change in status, and if the individual has any eligibility left between April 1 and September 30, 2021, and if the individual doesn't have other coverage available through a spouse's employment or the individual's new employment, then he or she will get "free" COBRA coverage. The employer then can recoup the costs with a credit on payroll taxes. The plan sponsor will have to do a great deal of administrative work figuring out how to send which notice to which individuals.

Let's break that down a bit.

Employer-sponsored health plans will be required to provide six months of "free" COBRA coverage to most plan participants who

- Are eligible for COBRA continuation coverage, and
- Lose coverage because of involuntary employment termination or reduction in hours.

The Plan must inform the eligible individual about the new benefit and provide the option to sign up for what amounts to a premium waiver for the six-month period. An employee or former employee will be eligible for this "free" coverage benefit if any of the following apply during the April 1-September 30 time period:

- The individual becomes eligible for COBRA coverage,
- The individual currently has COBRA coverage,
- The individual would have been eligible for COBRA coverage but declined it,
- And the individual is not eligible for other coverage, including through new employment or a spouse's plan.

The employer who sponsors the group health plan will be eligible for a tax credit in the amount of the premium waiver.

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The COBRA provisions of the American Rescue Plan Act, of course, are virtually incomprehensible to mere mortals. But here's an oversimplification of what this means to you as a plan sponsor:

- If anyone has COBRA coverage, you aren't supposed to collect the premiums during this April 1-September 30 period. If anyone becomes eligible for COBRA coverage during this period, you are required to tell them that they don't have to pay the premiums. If anyone declined coverage during the 18 months before April 1, you have to notify them that by May 31 they can change their election. This "free" coverage is not available to participants who resigned from employment.
- Do not cancel anyone's COBRA coverage between April 1 and September 30 for failing to pay the premiums.
- The statute does not provide for extended COBRA eligibility. If, for example, someone has only three months of eligibility left as of April 1, they get the subsidized coverage for only three months.
- If you use a vendor to manage your COBRA process, make sure the vendor does this properly. The contract with the vendor probably places the risk of error on the plan sponsor/employer (that would be you).
- Finally, your COBRA notice obligations have changed, and the new forms are supposed to be issued soon by the U.S. Department of Labor. We do not recommend that you try to prepare these notices yourself, mostly because we don't know how the DOL will interpret the statute. The reality is that much of this is going to have to be sorted out after the fact.

Again, this is an oversimplified explanation intended only to alert you to the issue. We hope that the DOL will provide guidance in the very near future.

Now you know.

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