



Take note of the key health and welfare benefit implications of the American Rescue Plan Act of 2021

March 2021

On March 11, 2021, President Biden signed the American Rescue Plan Act (ARPA) into law. The Act has several urgent and significant administrative implications for employers that sponsor group health and welfare benefits for their employees. Employers should contact their COBRA, FSA, and/or leave administrators to ensure they have a plan in place to comply with these rapidly approaching new requirements. Plan sponsors will ultimately be responsible for compliance with the new law.

Temporary 100% Subsidy for COBRA Coverage

The ARPA calls for all employers to offer up to six months of COBRA coverage at a 100% subsidy to assistance eligible individuals **between April 1 and September 30, 2021**. Employers will be responsible for compliance and should work closely with their COBRA administrators to notify and offer enrollment to assistance eligible individuals. The Federal government will reimburse employers for the cost of the COBRA premium subsidy through deductions in their quarterly Medicare payroll taxes.

What should employers do to prepare?

Employers should reach out to their COBRA administrators promptly to prepare for a special COBRA enrollment window and to notify individuals that are assistance eligible. More details on these requirements below.

Employers should also prepare to monitor COBRA expenses closely during 2021. Plans may incur additional expenses if the 100% COBRA subsidy encourages more individuals to enroll since COBRA populations typically incur more claims than they pay in premiums. However, this dynamic may be mitigated if the 100% subsidy attracts more healthy individuals to enroll in free coverage, reducing adverse selection. The ultimate financial impact may vary from employer to employer based on the demographics of each employer's eligible population and the timing of any recent workforce reductions.

Who will be eligible for the 100% COBRA subsidy?

Individuals will be eligible for a 100% COBRA subsidy if they lost eligibility for group health plan coverage during the prior 18 months due to an involuntary termination or an involuntary reduction in hours *and* they are not eligible for other group health coverage (including Medicare).

This means assistance eligible individuals may include:

- Individuals currently enrolled in COBRA coverage with an 18-month COBRA eligibility window that extends beyond April 1, 2021
- Individuals previously offered COBRA and who never elected it, but their 18-month COBRA eligibility window extends beyond April 1, 2021
- Individuals previously enrolled in COBRA that have since disenrolled or did not make premium payments, but their 18-month COBRA eligibility window extends beyond April 1, 2021

Assistance eligible individuals may receive less than the full six months of 100% COBRA subsidy if their original 18-month COBRA window expires between April 1 and September 30, 2021 or if they become eligible for other group health insurance during the six-month period.

Are covered spouses and dependents eligible?

Yes, covered spouses and dependents of eligible employees who lost their group health coverage due to the employee's involuntary termination of employment or reduction of hours are also eligible for the 100% subsidized COBRA period.

What is the special COBRA enrollment period?

Employers must offer a new 60-day enrollment window for assistance eligible individuals to elect the subsidized COBRA coverage. The enrollment window begins on April 1 and ends 60 days after the day the employer provides a COBRA notice to assistance eligible individuals.

The enrollment window must be offered to all individuals that experienced an involuntary loss of coverage as far back as November 2019, or 18 months prior to the April 1 start date of the new subsidized COBRA window. Employers may need to work with their COBRA administrator to identify individuals that experienced an *involuntary* loss of coverage as that data may not be passed to the COBRA administrator.

Employers must offer 100% subsidized COBRA coverage for all group health benefits except for health FSA. Employers may allow individuals to modify their COBRA elections during the special open enrollment window as long as the new coverage selected is the same cost or a lower cost than their original coverage.

What are the COBRA notification requirements?

Employers must send a supplemental COBRA notice to all individuals that are potentially assistance eligible within 60 days of April 1. The notices must include information about the 100% subsidy COBRA period, instructions on how to enroll, and notification of the opportunity to change coverage elections (as applicable). Employers should begin working with their COBRA administrators to draft the notices and deliver them to individuals as early as possible in April.

Additionally, employers must send another notification to any individuals that enroll in subsidized COBRA and whose 18-month COBRA coverage window will expire before September 30, 2021.

FSA Dependent Care Limit Increase for 2021 Calendar Year

The ARPA will allow employers, at their discretion, to increase the pre-tax contribution limit on their Dependent Care FSA from \$5,000 to \$10,500 (\$2,500 to \$5,250 for those married and filing jointly) only for the 2021 calendar year. This special allowance pairs with the additional flexibility from the Consolidated Appropriations Act, 2020 that allowed employers to administer mid-year Dependent Care FSA election changes. Employers that choose to allow employees to change and increase their Dependent Care FSA elections should test their plan for continued compliance with Section 129 nondiscrimination requirements.

Paid Leave Extensions *(for employers with less than 500 employees only)*

The ARPA extends and enhances the employer tax credits for paid emergency FMLA that were first enacted in March 2020 as part of the Families First Act. This extension only impacts employers with less than 500 employees.

For more information

For more information on the ARPA of 2021 and how the new law could impact your health and welfare programs, please contact your Fidelity Managing Director or contact us directly by emailing Fidelity Workplace Consulting at FidelityWorkplaceConsulting@fmr.com.

