

American Rescue Plan Brings More Benefits Changes

MARCH 12, 2021 |

By: HUB's EB Compliance Team

Among the many parts of the \$1.9 trillion [American Rescue Plan](#) (the "Act") are a few benefits-related items that employers will need to address.

Dulling COBRA's Bite

The Act provides a 100% subsidy for COBRA and continuation coverage under state mini-COBRA laws beginning with April 1, 2021 going through September 30. (For simplicity, we will refer only to COBRA, although the rules apply to both.)

This is only available to:

employees or dependents who became COBRA-eligible due to the employee's termination of employment or reduction in hours,
BUT NOT if the employee voluntarily resigned.

In other words, these COBRA-covered individuals will not have to pay any part of the premium. If the COBRA-covered individual pays the premium, the insurer or employer, as applicable, is required to refund it within 60 days.

Ending Early. The premium assistance can end before September 30 if the individual is eligible for other major medical coverage (not including Medicare, excepted benefits, health FSAs, or qualified small employer health reimbursement arrangements). Individuals are required to give notice of other coverage or face a \$250 penalty (or more if the failure to notify is intentional).

Chance to Re-up. Individuals who do not have a current COBRA election in effect or who had COBRA, but then dropped it before April 1 will have a new 60-day election period to take COBRA. However, this does not extend the maximum COBRA coverage period they would have had based on their original qualifying event. It's unclear how this new election period dovetails with the "pause" on COBRA deadlines announced by the DOL and IRS that we discussed [here](#). Presumably, this additional election rule would only apply to those who have exhausted their one-year pause and not elected COBRA, but are not beyond the end of their maximum coverage period.

Optional Election Window. The Act also allows (but does not require) employers to offer a 90-day window following when they become eligible for the subsidy for the individual to elect less expensive major medical coverage available to active employees. The other coverage cannot be only excepted benefits, a health FSA, or a qualified small employer health reimbursement arrangement.

Notices. Perhaps most importantly, COBRA notices must be revised to include a discussion of premium assistance and the 90-day election window (if it is offered). The Act contains specific requirements that must be included and directs the applicable agencies to develop a model notice within thirty (30) days of enactment. This additional information can be included in a separate document. Employers should work with their COBRA administrators to make sure they are updating their notices appropriately.

The Act also requires that individuals be given notice when their premium assistance is about to end between 45 and 15 days before it is supposed to end. Model notices will be issued for this too. However, notice is not required if the assistance is ending because the individual is eligible for other coverage as described above. Again, the employer should work with their COBRA administrators to make sure this is happening.

Paying for This. The COBRA subsidy is paid for by a credit against the hospital insurance (or "HI") tax. This is the 1.45% tax on payroll intended to help fund Medicare. It is not subject to a wage cap. For fully-insured plans not subject to federal COBRA (*i.e.*, those subject only to state mini-COBRA laws), the credit belongs to the carrier; for fully-insured plans subject to federal COBRA and all self-funded plans, the credit belongs to the employer. If the HI tax liability is not enough to cover the cost of the COBRA subsidy, the excess is treated as a tax overpayment which will be refunded by the IRS (including in advance).

Increased Exclusion for Employer-Provided Dependent Care Assistance

The Act also increases, just for taxable years beginning in 2021 (calendar year 2021, for nearly all dependent care plans), the dependent care maximum amount from \$5,000 to \$10,500 (or half that amount for married individuals filing separately).

Plans have until the end of the 2020 plan year to amend to add this, contrary to the standard rule that cafeteria plans cannot be amended retroactively. Employers wanting to adopt this increased limit will need to amend their plans by this deadline and operate their plans accordingly.

Premium Tax Credit Changes

The Act also makes several changes related to premium tax credit subsidies that help individuals buy individual health coverage on the Affordable Care Act ("ACA") exchanges/marketplaces. These changes have implications for employers subject to the ACA employer mandate since an employee receiving a tax credit is one of the requirements to trigger an employer mandate penalty (more information on the mandate is available [here](#)). Specifically:

The Act increases the size of the subsidies. For 2021 and 2022, the Act reduces the maximum amount an individual has to pay for individual coverage from 9.5% of income (as adjusted annually) to 8.5% of income. Importantly, this does not flow through to the ACA employer mandate. This means the affordability

percentage for the ACA employer mandate will remain at 9.83%. If affordable coverage (using 9.83%) is offered by the employer, the individual will not be eligible for a premium tax credit.

The Act increases the group of individuals eligible for subsidies. For 2021 and 2022, the Act removes the income cap on affordability for premium tax credit purposes. Prior to the Act, only those making under 400% of the federal poverty line (for 2021, \$51,520 for an individual; \$106,000 for a family of four) could receive these subsidies. Now, as a result of the Act, anyone, regardless of income, can receive subsidized individual health coverage on the ACA exchanges/marketplaces for 2021 and 2022. This could increase exposure to employers subject to the ACA employer mandate since now any employee not offered affordable, minimum value coverage by an employer subject to the mandate could trigger a penalty.

The Act gives larger subsidies to people who received unemployment compensation. Individuals who received unemployment compensation in 2021 are treated as having income of 133% of the federal poverty line for the entire year. This means they will be entitled to the maximum available subsidy for individual coverage (which, under the Act, could cover the individual's entire premium). As a result, an employer hiring someone who received unemployment assistance may find that this person will not want to enroll in the employer's coverage in 2021.

Next Steps

Employers should work with their COBRA vendors and, if subject to federal COBRA, their payroll tax providers to address the implementation issues around the COBRA subsidy. Specifically:

1. Making sure notices are updated with language about the subsidies; and
2. Addressing how the HI tax credit will be claimed.

Additionally, employers looking to expand their dependent care assistance programs should notify their administrators promptly if they are choosing to increase the maximum level of reimbursement for 2021. They should then amend their plans accordingly.

Finally, employers subject to the ACA employer mandate, but not currently offering affordable, minimum value coverage should consider whether to start offering it (or increasing their contributions to their current coverage to make it affordable). The increased availability of premium tax credits could lead to increased exposure to potential penalties.

For the latest information on COVID-19 and the vaccines, please keep visiting HUB's [Coronavirus and Vaccine Resource Center](#). If you have any questions, please contact your [HUB Advisor](#). You can also view more compliance articles in our [Compliance Directory](#).

NOTICE OF DISCLAIMER

The information herein is intended to be educational only and is based on information that is generally available. HUB International makes no representation or warranty as to its accuracy and is not obligated to update the information should it change in the future. The information is not intended to be legal or tax advice. Consult your attorney and/or professional advisor as to your organization's specific circumstances and legal, tax or other requirements.