March 19, 2021

Another Round of COVID-19 Relief Brings Another Round of Employee Benefit Plan Changes

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (Act), which is the latest federal COVID-19 relief bill. Like the previous COVID-19 relief bills, the Act contains numerous employee benefit plan provisions (summarized below). Some of these provisions are mandatory and take effect as early as April 1, 2021, which will require immediate action by employers (or their insurers or administrators). Other provisions are optional and allow employers to consider whether to implement these changes.

100% COBRA Subsidy

The Act provides up to six months of free COBRA coverage for "Assistance Eligible Individuals" along with related provision changes and new notice obligations. These new COBRA subsidies will operate similarly to the COBRA subsidies provided in 2009, although it remains to be seen whether subsequent guidance will be similar to the 2009 guidance. The following is a summary of the key information that plan sponsors should know about.

Individuals Eligible for the COBRA Subsidy

The Act provides that certain "Assistance Eligible Individuals" do not have to pay any COBRA premiums (a 100% subsidy) for the period April 1, 2021 through September 30, 2021. At this time, the subsidy is not provided for any months outside this period. It is a mandatory provision.

"Assistance Eligible Individuals" are those:

- whose qualifying event is an involuntary termination of employment for reasons other than gross misconduct or reduction in hours; and
- who currently have COBRA coverage or elect COBRA coverage during the special enrollment period described below.

Related Practices

COVID-19 Resource Center
Employee Benefits & Executive Compensation
Labor & Employment Relations

COBRA beneficiaries who do not meet these requirements, including those whose qualifying event is a voluntary termination of employment, do not need to be subsidized. COBRA beneficiaries cease to be Assistance Eligible Individuals if they otherwise become eligible for Medicare or other group health plan coverage (other than coverage consisting of only excepted benefits, health FSA coverage or coverage under a qualified small employer health reimbursement arrangement).

Plans Subject to the new COBRA Rules

The COBRA subsidy applies to all group health plans that provide major medical benefits and are subject to federal or state COBRA obligations, except for health flexible spending accounts. It applies to self-funded and fully-insured plans, multi-employer (union-sponsored) plans, and governmental employer plans.

Special Enrollment Period

The Act provides a new prospective election opportunity for Assistance Eligible Individuals who would have had COBRA coverage in the COBRA subsidy period had they elected or continued their originally available COBRA. This includes Assistance Eligible Individuals who never made a COBRA election in the first place or who made an election but later dropped COBRA coverage. This special enrollment period will begin on April 1, 2021 and continue through 60 days after the new "notice of extended election period" (described below) is provided.

An Assistance Eligible Individual who enrolls in COBRA coverage during the special enrollment period will have subsidized COBRA coverage from April 1, 2021 through September 30, 2021, or, if earlier, through what would have been the end of their maximum COBRA coverage period.

In addition, an employer is permitted (but not required) to allow Assistance Eligible Individuals 90 days from the date of the "notice of extended election period" to enroll in a different type of medical coverage than they previously had in effect at the time of the involuntary termination or reduction of hours, subject to certain conditions.

Additional Notice Requirements

Three new notices will be required as part of the Act:

- **General Election Notice Supplement**. For new COBRA beneficiaries who first become COBRA eligible on or after April 1, 2021, additional information must be provided in their COBRA election notices, including details regarding the possible availability of premium assistance and, if adopted by the employer, any option to change to different coverage. The DOL will develop the model notice within 30 days of enactment.

- **Notice of Extended Election Periods**. For COBRA beneficiaries who experienced a qualifying event prior to April 1, 2021 and would be eligible for the subsidy, a new notice with specified information must be provided. The DOL will develop the model notice within 30 days of enactment and the required information must be provided within 60 days of April 1, 2021.

- **Notice of Expiration of Premium Assistance**. For COBRA beneficiaries who are receiving subsidized coverage, notice must be provided 15 to 45 days before the end of subsidized

COBRA coverage that explains the end of the subsidy period and that additional COBRA or other coverage may be available. The DOL will provide a model notice within 45 days of enactment.

- This notice will need to be provided to qualified beneficiaries whose subsidy is ending because their COBRA period is ending, and to those who have remaining unsubsidized COBRA months after September 2021. This notice does not need to be sent to a COBRA beneficiary who self-reports eligibility for other group health coverage and is therefore disqualified from further subsidized COBRA coverage.

Credit to Employers

For self-funded plans, the entire subsidized premium amount, including the permitted two percent administrative fee, will be recovered by offsetting the employer's regular Medicare employment tax obligation. Any excess credits are advanceable and refundable to the employer. For insured plans, it appears that the carrier would recover the credit against its own Medicare tax obligations. However, the last time the government gave a COBRA subsidy (in 2009), the law had similar language and the IRS later released interpretive guidance changing the expected result. Specifically, what the IRS said in 2009 was that the insurer would only take the credit where the plan had 19 or fewer participants, otherwise the credit went to the employer. It is, as of yet, unclear, how the agencies will be administering the credit under ARPA for insured plans.

Dependent Care Assistance

The Act provides that for the 2021 calendar year, employers may increase the dollar limit for dependent care FSA contributions from the usual $5,000 to $10,500. This limit is also an increase from $2,500 to $5,250 for married couples filing separately. Employers who permit the increased limit will need to amend their Section 125 and 129 plans by the end of the plan year during which the amendment is effective.

Premium Tax Credits

The Act enhances eligibility for Premium Tax Credits (PTCs) under the Affordable Care Act, which make securing coverage through the Healthcare Marketplace or other state exchange more affordable. This has the effect of increasing access to healthcare and lowering the cost of coverage under the Healthcare Marketplace or other state exchanges by temporarily eliminating the phaseout of eligibility for households over 400 percent of the federal poverty level, reducing eligible households' share of premiums, suspending the recapture of excess credits previously provided, and considering anyone who received unemployment compensation during any week in 2021 as eligible.

Defined Benefit Retirement Plans

The Act includes two significant changes to the funding rules for single employer defined benefit plans.

- Due to historically low interest rates, discount rate stabilization used to calculate the liability for minimum funding purposes has been extended through 2030.

- The period over which unfunded liabilities must be amortized has been increased from seven to 15 years.

Michael Best

Multiemployer defined benefit plans and executive compensation were also impacted by the Act. However, those provisions are outside the scope of this Alert.

The Act creates many complicated compliance challenges and raises the risk of audits and penalties. Plan sponsors should coordinate with their COBRA administrators, brokers and benefits counsel on navigating these issues and implementing the Act.

Related People

Jorge Leon
Partner
jmleon@michaelbest.com
T 312.596.5831

Julia Mader
Associate
jfmader@michaelbest.com
T 414.270.2719

Kirk Pelikan
Partner
kapelikan@michaelbest.com
T 414.223.2529