IRS Issues Additional Guidance Regarding COBRA Premium Subsidy

May 25, 2021

As we previously reported here, the American Rescue Plan Act of 2021 (***ARPA***) provides a 100% COBRA premium subsidy to any qualified beneficiary who is entitled to COBRA coverage due to an involuntary termination of employment or reduction in hours of employment. Employers will receive a tax credit for the cost of COBRA premiums for April 1 to September 30, 2021. The IRS recently issued FAQs addressing many issues related to the subsidy, including: (i) subsidy eligibility, (ii) what qualifies as a reduction in hours or an involuntary termination of employment, (iii) the type of coverage eligible for the subsidy, (iv) when the subsidy period begins and ends, (v) the extended election period, (vi) coordination with the extended deadlines due to the COVID national emergency (***Outbreak Period Extensions***), (vii) payments to insurers, (viii) application to state continuation coverage, and (ix) calculation and claiming of the subsidy tax credit.

One of the main open issues for employers is how to determine if an employee's termination of employment was involuntary, thus making the employee eligible for the subsidy. The FAQs state an involuntary termination is a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment relationship, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services. An employee-initiated termination is considered involuntary if it is a termination for good reason due to employer action that results in a material negative change in the employment relationship for the employee analogous to a constructive discharge. Whether a termination is involuntary is a facts and circumstances determination. For example, if a termination is designated as voluntary or as a resignation, but the facts and circumstances indicate that the employee was willing and able to continue performing services, so that, absent the voluntary termination, the employer would have terminated the employee's services, and the employee had knowledge that the employee would be terminated, the termination is involuntary. Involuntary termination includes resignation due to a material change in geographic location, participation in a window program, and an employer's decision not to renew an employee's contract. Involuntary termination does not include an employee's termination due to general workplace safety concerns, the employee's health or inability to locate daycare, or the employee's death.

The FAQs also clarified that an individual who (i) elected COBRA due to a reduction in hours or involuntary termination and (ii) remained on COBRA for an extended period due to disability, a second qualifying event, or state mini-COBRA, is eligible for the subsidy if those extended periods

© 2026 Haynes and Boone, LLP

fall between April 1 and September 30, 2021. This *suggests* that a second election *does not* need to be offered to any qualified beneficiaries who would be in an extended COBRA period between April 1 and September 30, 2021 if they had elected COBRA coverage when initially offered. However, this interpretation is not specifically stated in the guidance.

Employers are permitted to (i) require individuals to self-certify that they are eligible for the subsidy and (ii) rely on the individual's self-certification, unless the employer has actual knowledge it is incorrect. Because employers who claim the credit are required to retain either the self-certification from the individual or other documentation to substantiate that the individual is eligible for the subsidy, it appears many employers will want to require and retain the self-certification in the event of a future audit.

Finally, employers should ensure their COBRA administrators understand how the subsidy affects the Outbreak Period Extensions. For example, the FAQs provide that, if an individual elects subsidized COBRA but does not elect retroactive coverage to the date of the COBRA qualifying event before April 1, 2021, the individual cannot later elect that retroactive coverage even if the individual would otherwise still have an Outbreak Period Extension.

IRS Notice 2021-31 is available here.

© 2026 Haynes and Boone, LLP