

## Department of Labor Offers New COBRA Notice Forms: Please Use Them!

We know that most of our clients' eyes glaze over when it comes to the intricacies of COBRA. Many of our clients outsource their COBRA obligations to third-party vendors. Recent changes to COBRA are dramatic and far-reaching. Every employer should have at least a glancing familiarity with the new, temporary rules which we suspect may become permanent.

The Department of Labor ("DOL") recently issued a [guidance](#) related to the federal subsidy of COBRA premiums ("Premium Subsidy") from April 1, 2021, through September 30, 2021 (the "Subsidy Period"). For more information, see our previous article about the ARPA COBRA subsidiary [here](#). The DOL's guidance includes a list of Frequently Asked Questions ("FAQs"), and Model Notices for employers. Please use these new forms.

Pursuant to ARPA, employers must provide eligible individuals with revised COBRA notices informing them of the availability of premium assistance and their rights under ARPA prior to May 31, 2021. [FAQ 10 and 11](#) offer clarity on this issue.

Employers have a general obligation to provide information regarding the availability of the ARPA Premium Subsidy and the option to enroll in different coverage to any former employees who become entitled to COBRA coverage during the Subsidy Period. This information may

be provided on its own or included with the employer's standard COBRA election notice.

Employers must also notify former employees of their 60-day opportunity to elect COBRA prospectively for the Subsidy Period. This notice must be provided by May 31, 2021.

The third notice employers are responsible for, is a notice of expiration of premium assistance. This explains that the subsidized assistance for the employee will expire soon, the date of expiration, along with the fact that the former employee may be eligible for coverage without any premium assistance through COBRA continuation coverage or coverage under a different group health plan. This notice must be provided at least 15 days before the Premium Subsidy expires, but no earlier than 45 days before expiration.

FAQ 11 further states that these notices must include the following information:

- The forms necessary for establishing eligibility for the premium assistance;
- Contact information for the plan administrator or other person maintaining relevant information in connection with the premium assistance;
- A description of the additional election period (if applicable to the individual);
- A description of the requirement that the Assistance Eligible Individual notify the plan when he/she becomes eligible for coverage under another group health plan (not including excepted benefits, a

QSEHRA, or a health FSA), or eligible for Medicare and the penalty for failing to do so;

- A description of the right to receive the premium assistance and the conditions for entitlement; and
- If offered by the employer, a description of the option to enroll in a different coverage option available under the plan.

To offer additional assistance to employers and plan administrators, the DOL also issued Model Notices. While employers are not obligated to use the Model Notices, using them shall be taken as good faith compliance with ARPA's notice requirements. See below for the Model Notices:

- [Model General Notice and COBRA Continuation Coverage Election Notice](#) (For COBRA qualified beneficiaries with qualifying events during the Subsidy Period).
- [Model Notice in Connection with Extended Election Period](#) (To be issued by May 31, 2021, to all AEs, including those who would be entitled to subsidies but never enrolled in or discontinued COBRA coverage.)
- [Model Alternative Notice](#) (An alternative election notice to be used by employers and plan administrators for coverage subject to individual state continuation requirements during the Subsidy Period.)
- [Model Notice of Expiration of Premium Assistance](#) (For employers and plan administrators to alert AEs 15–45 days before their subsidized coverage expires.)
- [Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021](#) (A

summary of the subsidy provisions, which should be attached to all other COBRA notices and includes a “Request for Treatment as an Assistance Eligible Individual” form by which the individual may request to be treated as an AEI or give notice of eligibility for other coverage.)

### Employer Considerations

Even if our clients outsource their COBRA notice obligations, new changes to COBRA warrant every employer’s attention. One year’s continuation of group health insurance for a family costs \$20,000 or more. Whether this cost reverts to an employee’s burden after September 2021 is an open question. We bet “No.”

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