# New COVID-19 Relief Law Includes Employment-related Provisions

## March 2021

Congress has signed the much-discussed $1.9 trillion COVID-19 relief bill on March 10, 2021 and sent it to the White House. President Biden has said he will sign the measure on Friday, exactly one year after much of the nation shut down in response to the coronavirus pandemic. The sweeping new law, known as the American Rescue Plan Act, includes many employment-related provisions.

***Notable provisions in the relief package:***

- Extension on certain unemployment benefits enacted through prior pandemic-relief legislation through September 6 including offering recipients an extra $300 subsidy per week in addition to currently available state unemployment benefits;
- Individuals with an adjusted gross income of $75,000 or less ($150,000 for joint filers) are eligible to receive a one-time payment of $1,400 plus an additional $1,400 for each dependent child. The amount of the checks phases down for individuals earning at least $75,000 and cuts off completely for anyone above the $80,000 mark;
- Employers with fewer than 500 employees may continue to provide paid leave for COVID-related reasons (as under the Families First Coronavirus Response Act) with the cost set off by fully refundable federal tax credits through September 30. The employer requirement to provide paid leave under federal law (FFCRA) expired December 31, 2020;
- Federal and state COBRA Qualified Beneficiaries will be entitled to continue group health benefits at $0 cost for situations in which an employee has lost coverage under their employer's health care plan because of a layoff or involuntary termination. This provision will apply April 1, 2021 to September 30, 2021. Plan sponsors will offset their cost through a payroll tax credit (additional details are provided below);
- For 2021 only, Dependent Care Assistance Plan participants may increase the amount which may be elected tax-free through a qualified §129 Dependent Care Assistance Program (DCAP) from $5,000 to $10,500 (or from $2,500 to $5,250 for individuals who are married but filing separately);
- $7.25 billion has been added to the Paycheck Protection Program Flexibility Act of 2020, which provided for fully forgivable loans for certain employers on the condition that they maintained their payroll and employee headcount; and
- $86 billion is now available to help fund struggling multi-employer pension plans to ensure workers receive their retirement benefits for the next 30 years.

The new law also has ramifications for the Affordable Care Act (ACA) as it expands eligibility for subsidies to buy health insurance to people of all incomes under the ACA. In changing the formulas for health insurance tax credits, it will allow a much wider number of individuals to qualify for the credits.

The package also provides $25 billion in relief for small and mid-sized restaurants, which have been especially hard-hit during the pandemic. In addition, it provides significant funding for COVID-19 vaccine activities. Left out of the American Rescue Plan Act was any change to the federal minimum wage for now, which remains at $7.25 where it has been since July 2009, though the minimum wage for many federal contractors recently increased to $10.95.

**Overview on COBRA Subsidy Provision**

The most significant benefits-related provision in this new relief legislation creates a federal subsidy that will cover 100% of COBRA premiums for certain Qualified Beneficiaries (QBs) who have federal or state continuation of coverage rights following an involuntary termination of employment or reduction in hours. The QBs will pay nothing. The employer will pay the full premium due to the carrier or cover QBs at no cost on a self-insured plan. Employers will then recover the premiums through a payroll tax credit. There are also significant new notice requirements.

**Subsidy Coverage Details**

The subsidy runs from April 1, 2021 through September 30, 2021. The subsidy is available for QBs who become eligible for continuation coverage during the April 1 – September 30 timeframe, as well as those who previously became eligible for continuation coverage and are still within their maximum coverage period. However, it is only available for COBRA coverage due to involuntary termination or a reduction in hours. Importantly, some previously eligible COBRA QBs not currently enrolled because they waived COBRA, or who elected COBRA and subsequently dropped it, will have a second chance to enroll in COBRA coverage to take advantage of the subsidy.

Additionally, the subsidy will cover the full cost of continuation coverage at any coverage level (e.g., single or family) for employees and former employees, and their spouses or dependents who are QBs following an involuntary termination or reduction in hours. The subsidy is available for continuation coverage of any group health plans subject to COBRA (e.g., medical, dental, vision, etc.), but not health flexible spending accounts (FSAs). The subsidy will also apply to state continuation, which is similar to federal COBRA, when due to an involuntary termination or reduction in hours. The subsidy expires September 30, 2021, or sooner if the QB's maximum coverage period expires or when a QB becomes eligible for other group health plan coverage or Medicare. A QB receiving the subsidy is required to notify the employer (or administrator) upon becoming eligible for other coverage and could face a $250 penalty for failure to notify the employer.

**"Second Bite at the Apple"**

Individuals who previously experienced an involuntary termination, or reduction in hours, but did not elect COBRA, or those who elected and have subsequently dropped COBRA coverage, and who are still within their COBRA maximum coverage period, must be given a second chance to elect COBRA to take advantage of the subsidy. If such individuals elect COBRA coverage within 60 days of being notified of the subsidy opportunity, coverage would be provided prospectively from the second election date, not retroactively to the original COBRA event date. There could be a lapse in coverage between the original COBRA event and the new special second election. Employers cannot force the QB to pay back premiums to take advantage of this second election opportunity. In no case is an individual eligible for more than the COBRA maximum coverage period measured from the original event date.

**Employer Tax Credit**

Employers will recover premiums not paid by COBRA QBs through a payroll tax credit, similar to the manner in which employers recovered mandatory Families First Coronavirus Response Act (FFCRA) paid leave costs.

If the tax credit exceeds the amount of payroll taxes due for a particular period, the employer can apply for a refundable tax credit. In most cases, however, the employer will have more payroll taxes due for any particular period than the amount of credit they can claim for lost COBRA premiums.

**Notice Requirements**

Existing COBRA election notices will need to be updated or supplemented with new language describing the subsidy. The rules include specific information that will need to be included in all COBRA election notices. There is also a new special notice that employers must send to any individuals who experienced a COBRA event due to an involuntary termination or reduction in hours and who are still within their 18-month maximum COBRA period. This notice informs these individuals of their right for a second chance at electing COBRA coverage. The special notice must be sent to eligible individuals no later than May 31, 2021 (60 days after the date the subsidy goes into effect). Additionally, a notice must be sent to anyone receiving the subsidy informing them when the subsidy is about to end. This notice must be sent between 15 - 45 days prior to the expiration of the subsidy.

The agencies are required to provide model notices to help employers satisfy these notice requirements.

The new COBRA rules obviously present an administrative challenge to employers and administrators, and it is expected that many individuals will take advantage of this opportunity to acquire health insurance at no cost. We expect the regulatory agencies to release some additional guidance and model notices, but with the short timeframe, it may come in the form of FAQs and informal guidance rather than regulations. Employers should coordinate with their COBRA administrators to ensure timely compliance with the COBRA subsidy requirements.

HBI will be carefully monitoring our legal resources and will provide updated information, including the COBRA model notices when they become available.  Please feel free to email slherrle@hb1893.com if you have any questions.

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