April 9, 2021

U.S. Department of Labor Issues FAQs and Model Notices Regarding COBRA Subsidy

On April 7, the U.S. Department of Labor (DOL) issued the first set of agency guidance in the form of Frequently Asked Questions (FAQs) and model notices regarding the 100% COBRA premium subsidy (Subsidy) provided for under the American Rescue Plan Act (Act). As detailed in our prior alert, the Subsidy is available to employees whose COBRA qualifying event was an involuntary termination of employment or reduction in hours, and to the spouses and dependents of such employees (Assistance Eligible Individuals), for the period beginning April 1, 2021, and ending on the earliest of (i) September 30, 2021; (ii) the end of their COBRA coverage period; or (iii) the date they become eligible for another group health plan or Medicare. The FAQs clarify the time period within which plan administrators must provide the applicable notices and the time period within which Assistance Eligible Individuals can elect COBRA continuation coverage subject to the Subsidy. The model notices vary, as is more fully explained below, depending on the specific circumstance for which they are being provided.

What Do Employers Need to Know?

- The extended time frames for COBRA notices and elections currently in effect because of the COVID-19 pandemic do not apply for purposes of the Subsidy. (*See* our prior alert summarizing the extended time frames.) Effectively, this means plan administrators must provide the applicable notices regarding the Subsidy within the time periods dictated by the DOL. Similarly, Assistance Eligible Individuals must make their elections within the time periods set forth by the DOL ***if*** they want to receive the Subsidy. In other words, an Assistance Eligible Individual who timely elects COBRA continuation coverage within the extended time frames related to the COVID-19 pandemic but outside the time period for the Subsidy will still be entitled to COBRA continuation coverage; however, the individual will not be eligible for the Subsidy.
- Since the notice requirements differ depending on the date the Assistance Eligible Individual experienced a reduction in hours or an involuntary termination of employment, employers will want to carefully categorize individuals to ensure they receive the appropriate notice:
    - If the reduction in hours or involuntary termination of employment occurred **before April 1, 2021,** Assistance Eligible Individuals must receive a notice that fully explains their election rights regarding the Subsidy. The notice must be provided regardless of whether the individual has previously made a COBRA election. Employers must provide this notice by **May 31, 2021.** Assistance Eligible Individuals have **60 days** from receipt of the notice to elect subsidized COBRA coverage. (*See* the DOL's Model Notice in Connection with Extended Election Period.)
    - If the reduction in hours or involuntary termination of employment occurs **between April 1, 2021 and September 30, 2021,** Assistance Eligible Individuals must receive a notice that explains their right to the Subsidy. The FAQs provide that Assistance Eligible Individuals have **60 days** from receipt of the notice to make their election to receive the Subsidy. Employers should immediately modify their general COBRA notice to include a description of the Subsidy and should distribute it to all qualified beneficiaries (including those who are not Assistance Eligible Individuals) in accordance with the general time periods required by

COBRA. The DOL's model notice can be used for this purpose. (*See* the DOL's Model General Notice and COBRA Continuation Coverage Election Notice.)

- When sending either of the notices referenced above, the plan administrator should include a copy of the DOL's Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021. This document contains a form that individuals can use to request treatment as an Assistance Eligible Individual. If, prior to the date the Subsidy notices are provided, an employer receives such a request, the employer should not collect COBRA premiums and require the individual to seek reimbursement.
- Employers must provide a separate notice to Assistance Eligible Individuals **15 to 45 days before** their Subsidy will expire. (*See* the DOL's Model Notice of Expiration of Premium Assistance.)

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If you need assistance understanding how the Subsidy impacts plan administration and what revisions should be made to your COBRA notices and administration, or if you have any other benefits questions, please reach out to any of the attorneys in Day Pitney's Employee Benefits and Executive Compensation group.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center. COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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