March 17, 2021

American Rescue Plan Provides COBRA Subsidies and Increased Dependent Care Spending Account Limits

On March 11, President Biden signed the American Rescue Plan Act (the Act), which contains changes affecting employers that sponsor group health and dependent care assistance programs (the Act also provides funding relief for single employer and multiemployer pension plans that are outside the scope of this summary). These provisions represent another effort by the federal government, whether through congressional action or regulatory relief, to increase employees' access to employee benefit plans during the COVID-19 pandemic.

COBRA Continuation Coverage Subsidy

Certain individuals ("qualified beneficiaries") who are continuing (or are eligible to continue) their group health plan coverage through COBRA will be eligible for a **100 percent COBRA premium subsidy** for the period April 1, 2021, through to the *earliest* of (i) September 30, 2021; (ii) the end of their COBRA coverage period, e.g., 18 months; or (iii) the date they become eligible for another group health plan or Medicare.

- Eligible qualified beneficiaries are employees whose qualifying event was involuntary termination of employment or reduction in hours, and the spouses and dependents of such employees.
    - Individuals who would otherwise be eligible for the COBRA premium subsidy but who did not elect COBRA, or who dropped (or drop) their coverage before April 1, 2021 must be provided an additional election period for prospective coverage.
- The Act requires Plan Administrators to (i) notify eligible qualified beneficiaries of the subsidy and the beneficiaries' obligation to notify the plan if they become eligible for other coverage, (ii) provide a special 60 day enrollment period for eligible qualified beneficiaries who did not elect or dropped coverage, and (iii) notify eligible qualified beneficiaries prior to the expiration of the subsidy. Model notices will be made available shortly.
- Employers will be reimbursed for the premium amounts not otherwise paid by the qualified beneficiaries through a quarterly tax credit against their Medicare payroll tax and, to the extent the quarterly tax credit exceeds the Medicare payroll tax, through a refund of employment tax. If an employer is not subject to federal COBRA rules (e.g. it is a small employer) and maintains an insured group health plan, the credit is provided to the insurer.
- Employers are permitted (but not required) to allow eligible qualified beneficiaries to change their group health coverage to certain other plan options that have the same or lower cost premium, e.g. going from a PPO to high-deductible health plan.

Dependent Care Assistance Plan

The Act provides a temporary increase in the maximum amount available for reimbursement under a dependent care assistance plan to $10,500 from $5,000 for the 2021 taxable year. Employers wishing to increase the maximum amount under their dependent care assistance plan may do so by adopting a retroactive amendment no later than the last day of the plan year in which the amendment is effective, i.e., by December 31, 2021, for a calendar year plan. Adoption of the increase is voluntary.

What Should Employers Do?

Federal agencies have recently issued COVID-19 relief that (i) implements the relief provided under the Consolidated Appropriations Act of 2021 (the Appropriations Act) and (ii) extends the key time frames for plan administration and ERISA-required disclosure periods. It is unclear how the existing guidance interacts with the Act and, therefore, how employers should proceed. Certainly, employers wishing to adopt the dependent care assistance plan increase should allow a new enrollment period unless they have already allowed midyear changes for any reason as permitted by the Appropriations Act. (*See* our prior alerts summarizing this and other employee election relief here and here). What is less clear is how the COBRA premium subsidy interacts with the extended deadlines applicable to ERISA plan administration. For instance, under the Department of Labor's recently released guidance (EBSA Notice 2021-01), a COBRA election doesn't need to be made until the earlier of (i) one year from the date the election would otherwise have been due or (ii) 60 days after the end of the COVID-19 National Emergency's "Outbreak Period" (*See* our prior alert for background.) Employers may want to remind eligible employees they can make a COBRA election retroactive to the initial loss of coverage under the general rules when notifying them that they can elect COBRA effective April 1, 2021, with a 100 percent subsidy. Employers need to immediately begin planning for these changes. Employers should, at a minimum:

- examine their records to identify which qualified beneficiaries will need to be contacted regarding the COBRA premium subsidy;
- consider whether they want to allow these qualified beneficiaries to change their coverage option;
- coordinate with their COBRA vendors regarding updating and distributing COBRA notices as soon as possible; and
- determine whether they wish to increase the maximum benefit under their dependent care assistance program and, if so, notify their employees and amend their plan documents.

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If you need assistance understanding how these changes impact plan administration or with preparing plan amendments or employee communications, 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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