Confusion around COBRA subsidies emerges with the passing of the ARP

The American Rescue Plan Act (ARP 21) is law, and that has some tangible implications for employers. The credits, including the new COBRA credit, remain advanceable and you may continue to reduce your payroll deposits to pay for them. Advances and reduced deposits are still reconciled on your Form 941. However, as it turns out, the COBRA subsidy in the American Rescue Plan Act isn't all that straightforward.

Unclear and confusing legislation out of Washington will surely not come as a shock to many. However, it is up to businesses to comply despite the frequent changes in policy and inevitable confusion. With that in mind, businesses must do their best to keep up with the changes and implications.

There may not be enough clarity from the IRS yet. However, by looking at the current guidelines and analyzing past IRS COBRA subsidies, it's possible to get some insight into how this may be applied today.

COBRA subsidy for more employees

ARP 21 extends the 100% COBRA subsidy to COBRA-eligible individuals from April 1 through Sept. 30, if they were terminated from employment or had their hours reduced. The termination or reduction in hours doesn't necessarily have to be pandemic-related or have occurred on or after March 18, 2020, the day the Families First Coronavirus Response Act was enacted. You will receive a payroll tax credit against the employer's 1.45% share of Medicare taxes.

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That means you must:

- Identify employees who are covered by this credit, excluding those who quit.
- Identify employees who could have elected COBRA coverage but didn't, or employees who let their COBRA coverage lapse, and notify them of a 60-day special enrollment period, beginning April 1. The Department of Labor will have model notices available shortly.
- Identify the last day of employees' COBRA coverage — the earliest of the date they enroll in other group coverage or Medicare, the date they max out on COBRA coverage, or Sept. 30.
- Turn off employees' monthly premiums, starting April 1.
- Notify employees about the subsidy; the DOL will have model notices available shortly.

Any employee who was terminated or had their hours reduced and who qualifies for COBRA is eligible for the subsidy until the earlier of:

- The date they enroll in other group coverage or Medicare.
- The date they max out on COBRA coverage.
- September 30.

But no COBRA for some

ARP 21 doesn't change who qualifies for COBRA. Here we need to consider two groups of individuals:

- Employees' live-in significant others.
- Newly married or divorced employees.

And the subsidy rules may differ.

2009 COBRA subsidies may add some clarity

This isn't the IRS' first rodeo with COBRA subsidies. Back in 2009, as part of the recovery from the Great Recession, Congress enacted a 65% COBRA subsidy. For employees who were covering non-COBRA-eligible individuals on their group health plan, the IRS took a graduated response.

Employees received the full subsidy if it didn't cost them any more to cover non-COBRA-eligible individuals. This had some anomalous results, as illustrated by these two examples from 2009.

> *Example:* Robin and her two kids were COBRA-eligible individuals; Rick, her live-in significant other, wasn't a COBRA-eligible individual, but was on her health insurance. Robin had self-plus-two-or-more-dependents group health coverage when she was employed and paid $1,000 a month in premiums (there was no self-plus-three coverage). Since the addition of Rick didn't add to her premium cost, Robin got the full COBRA subsidy.
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> *Example:* Jennifer's group health insurance covered herself, her child, and Ben, her significant other. Her monthly cost for self-plus-two coverage was $800. However, under her former employer's plan, she would only have to pay $600 for self-plus-one coverage. Her subsidy was based on a monthly payment of $600. She paid $410 ($600 × 35% = $210 + $200 for Ben's coverage.)

Back in 2009, the IRS said employees' spouses, ex-spouses, and dependents were COBRA-eligible individuals and they had an independent right to elect COBRA at the subsidized rate. That's the same this time, too. But the IRS also threw a whammy at these individuals, by concluding they weren't eligible for the subsidy if a qualifying event, other than involuntary termination, preceded the involuntary termination. They could COBRA at the full 102% rate.

Example: Sam and Sally divorced in September 2008 and Sally elected COBRA at that time. Sam was laid off in March 2009 and he elected COBRA at the subsidized rate. Sam was eligible for the COBRA subsidy; Sally was not.

Hello, IRS

The IRS needs to clarify the parameters of the current COBRA subsidy. Until it does, you should proceed cautiously. If you end up overpaying, you'll be able to reconcile the overpayment on your 941 or you can request a refund on Form 843.

Additional resource: The American Rescue Plan Act of 2021's impact on payroll.

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