

2021

Deep Dive into the COBRA Subsidy Rules

Presented by Benefit Comply

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- Bolton & Company
- Catto & Catto Inc.
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- Woodruff Sawyer



Bob Radecki, Principal

Mr. Radecki has over 30 years of experience in the HR and employee benefits industry helping employers deal with difficult benefit and compliance matters. Bob founded and served as President of A.E. Roberts Company, a nationally recognized compliance consulting and training firm. Bob is recognized as a leading expert on a variety of benefit compliance issues including COBRA, FMLA, ERISA and Health Reform. Bob has been the featured speaker at many industry events and conferences and has published several articles concerning employee benefits compliance issues.



Amanda Olimb, J.D., Senior Consultant

Ms. Olimb is a benefits attorney who specializes in the area of health and welfare plan compliance. Her areas of expertise include ERISA, Section 125, Health Reform, HRS/HSA rules, and more. Prior to joining Benefit Comply, she was a compliance attorney for a national employee benefits consulting firm. Currently she is responsible for answering client compliance questions, providing compliance project consulting, writing compliance alerts, issue briefs and whitepapers, and delivering compliance related training. Ms. Olimb received her law degree from Mitchell Hamline College of Law where she graduated Magna Cum Laude and was chosen to participate in highly selective Mitchell Hamline Fellows Program.



Regan Debban J.D., Principal

Ms. Debban has more than 10 years' experience in employee benefits as both an attorney and an advisor. She provides guidance related to regulatory compliance matters to employers and insurance industry professionals. Ms. Debban's work has included helping employers navigate and find practical solutions to complicated Affordable Care Act requirements and with other employee benefit compliance issues arising under ERISA, COBRA, Section 125, and HIPAA. Ms. Debban has been a featured speaker at events nationwide and has been a principal presenter in compliance webinars attended by thousands of employers and insurance professionals. She is also the author of a leading guide to ACA employer reporting requirements. Prior to joining Benefit Comply, Ms. Debban worked as in-house counsel assisting in HR, benefit, and data security compliance, including for a major Fortune 500 company. She also worked as a legal researcher and as an employee benefits consultant before entering law school. Ms. Debban received her law degree from William Mitchell College of Law and her MBA from The University of St. Thomas.

Agenda

- COBRA Subsidy Overview
- Frequently Asked Questions (FAQs)

COBRA Subsidy Summary

COBRA Subsidy Highlights

AEIs

100% COBRA Subsidy for Assistance Eligible Individuals

- COBRA or State Continuation due to reduction in hours or involuntary termination of employment
 - Employers (fully-insured and self-insured) responsible for federal COBRA eligible AEIs
 - Carriers responsible for state continuation AEIs
- AEIs include spouses and dependent qualified beneficiaries only if triggering event is the employee's reduction in hours or involuntary termination of employment
- Individuals not eligible for subsidy if they are eligible for another group health plan or Medicare

Timing of Subsidy

April 1 – September 30

- Available for new subsidy eligible qualifying events, AEIs on COBRA now, and for those who previously had a subsidy eligible qualifying event and are still in their maximum coverage period (e.g., 18 months after involuntary termination of employment for a COBRA AEI)
- Subsidy ends if AEI reaches maximum coverage period or becomes eligible for other group health plan coverage or Medicare

COBRA Subsidy Highlights

Plans

All Plans Subject to COBRA Except Health FSA

- Statutory language only excludes Health FSA
- 2009 ARRA COBRA subsidy also included all COBRA plans except Health FSA

Involuntary Termination

Interpret “Involuntary” Broadly

- No guidance yet, but there was significant guidance during the 2009 ARRA COBRA subsidy

Second Chance

AEIs with Prior Event Get a Second Chance to Enroll

- Applies to AEIs who had a subsidy qualifying event and did not elect the first time, as well as those who elected but have since dropped coverage
- AEI must still be in maximum coverage period
- Employer must notify by May 31st
- AEI has 60 days from notice to elect

COBRA Subsidy Highlights

The Notices

DOL Has Issued Model Notices

- Model Election Notice with Updated Subsidy Language
- Model Notice in Connection with Extended Election Period
- Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021
 - Includes AEI certification of eligibility forms
- Notice of Expiration of Premium Assistance

Payroll Tax Credit

Recover COBRA Payments Through a Payroll Tax Credit

- Employer withholds amount of lost COBRA premium payments from Medicare payroll tax deposits
- Reported on quarterly payroll tax filing
- Government entities are eligible for payroll tax credit

Frequently Asked Questions (FAQs)

Involuntary Termination of Employment

- **What is Considered an Involuntary Termination of Employment?**
 - 2009 ARRA Guidance for involuntary termination was interpreted broadly
 - An involuntary termination means a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services.*
 - Layoffs and reductions in force
 - Failure to renew a contract
 - Termination for cause
 - Employer's action to end an employment when employee cannot work due to illness or disability
 - Employee resignation as the result of employer-initiated change in work location
 - Termination does not need to be related to COVID
 - Termination for gross misconduct ineligible for COBRA or the subsidy

Payroll Tax Credit

- **How does the employer recover lost COBRA premium payments?**

Note: The IRS has not issued any guidance to-date. We assume the process will work similar to the 2009 ARRA COBRA subsidy. This process is subject to change if IRS releases new and differing guidance.

- Employer takes a credit against Medicare portion of payroll taxes
 - A credit equal to missed COBRA payments can be taken for each deposit - then the total credits will be reported on the employer's quarterly (941) or annual (943 or 944) payroll tax report
- Government entities are eligible for the payroll tax credit
- TBD - IRS will release process for employers to use when Medicare payroll tax liability is less than missed COBRA premiums

Payroll Tax Credit

- **What documentation does employer need to recover the lost COBRA premium payments?**
 - 2009 ARRA COBRA Subsidy IRS documentation requirements
 - For insured plans, a copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier
 - For self-insured plans, proof of the premium amount and proof of the coverage provided to AEIs
 - Attestation of involuntary termination including the date of the involuntary termination
 - Proof of each AEI's election of COBRA coverage
 - A record of the Social Security numbers (SSNs) of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for one individual or two or more individuals
 - Other documents necessary to verify the correct amount of reimbursement

Eligibility for Group Health Plan Coverage

- **What counts as eligibility for other group health plan coverage?**
 - Eligibility (no enrollment required) under an employer-sponsored group medical plan
 - Through a spouse or parent
 - Retirement plans
 - Employment offer alone does not equal group health plan eligibility
- **What does not count as eligibility for other group health plan coverage?**
 - Excepted benefits
 - QSEHRA
 - Health FSA
 - Medicaid
 - Exchange coverage

Continuation Coverage

- **What coverage must be offered, and to which individuals?**
 - Medical, dental, vision, HRA, EAP, onsite clinic
 - Not health FSA
 - Only required to offer COBRA subsidy for coverage in place when the reduction in hours or involuntary termination of employment occurred
 - Includes enrolled employees and their enrolled family members
- Can choose to allow enrollment in coverage that is different from the coverage they had at the time of the COBRA qualifying event
 - COBRA premium is the same or lower than for the coverage the individual had at the time of the qualifying event
 - Not required
 - If employer chooses not to allow, update model notices

Existing Qualifying Beneficiaries

- **How far are we required to “look back” to determine who must receive a notice?**
- Generally, 18 months (i.e., qualifying events that occurred in Oct 2019 or later)
 - State continuation (up to 36 months)
 - Possible extensions:
 - Due to 2nd qualifying event for spouses and dependents (36 months)
 - Disability determination (29 months)

Notices

- **Who needs to receive which notices?**

New Qualifying Beneficiaries
(Now – Sept. 2021)

- The normal election notice should be replaced with the "**Model General Notice and COBRA Continuation Coverage Election Notice**" along with the "**Summary of COBRA Premium Assistance Provisions**"

Existing Qualifying
Beneficiaries

- The "**Model Notice in Connection with Extended Election Period**" along with the "**Summary of COBRA Premium Assistance Provisions**"
- Must be sent by May 31st

Individuals who elect COBRA
subsidy April – Sept. 2021

- The "**Model Notice of Expiration of Premium Assistance**"
- Must be sent 15-45 days prior to the subsidy ending due to end of maximum coverage period or reaching Sept. 30th

Attestation

- **Do we have to collect the certification that is part of the Summary of COBRA Premium Assistance Provisions?**
- Not required, but recommended
 - Ensure carrier/stop-loss carrier will provide coverage
 - Proof of the employer's right to collect payroll tax credits

Federal COBRA versus State Continuation

- **Who is responsible for sending the notices and providing the coverage?**
- **Who gets to collect the payroll tax credit?**

Plans Subject to Federal COBRA

- Employer is responsible for sending notices, providing subsidized coverage, and requesting payroll tax credits

Plans Subject to State Continuation

- Carrier is responsible for sending notices, providing subsidized coverage, and requesting payroll tax credits

Plans Subject to Both

- ???

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