

CLIENT ALERT: IRS Releases Guidance Regarding COBRA Subsidies Under ARPA

On May 18, 2021, the IRS released much-anticipated [guidance](#) regarding the implementation of the COBRA subsidy provisions of the American Rescue Plan Act of 2021 (“ARPA” or the “Act”). The 40-page guidance document provides helpful answers to various COBRA subsidy interpretation and application questions, many of which employers have puzzled over since President Biden signed the Act into law on March 11 and which were left unanswered by [U.S. Department of Labor guidance](#). The guidance contains a series of “Questions and Answers” covering topics including the following:

- Basic eligibility for COBRA premium assistance, including the right of employers to require an individual to “self-certify” their eligibility
- The definition of “involuntary termination” or a “reduction of hours” for purposes of determining a subsidy-qualifying event
- Types of coverage eligible for COBRA premium assistance (such as dental, vision, HRA, and retiree coverage)
- Timing of COBRA premium assistance
- Extended election period issues
- Extensions of COBRA under existing Emergency Relief Notices
- Payments to insurers under federal COBRA, and comparable state continuation coverage
- How to calculate the COBRA premium assistance credit, including with respect to employers that cover COBRA costs (in whole or in part) as a severance benefit
- How to claim the tax credit for providing COBRA premium assistance

Perhaps most critical to employers, the guidance identifies the circumstances that constitute an “involuntary termination of employment” for the purposes of determining eligibility. The guidance defines involuntary termination to mean a separation from employment either (a) “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” or (b) constructive discharge. The guidance continues by providing helpful examples of what types of separations may qualify for the subsidy, including a discussion about resignation, retirement, death, and non-renewal of an employment agreement. While the guidance does not purport to answer all issues that may arise concerning the implementation of the COBRA subsidy under the ARPA, it is nevertheless welcome as employers rush to fulfill their obligations to identify and notify individuals of their extended COBRA election and subsidy rights under the Act by May 31, 2021.

Employers should review the guidance to ensure they understand their COBRA subsidy obligations under ARPA and should consult with their M&J attorney and their plan administrators with any questions.

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