GBS COVID-19 Update

IRS FAQs on COBRA Subsidies created by the American Rescue Plan

On May 18, 2021, the IRS issued Notice 2021-31 (entitled "Premium Assistance for COBRA Benefits"). The notice provides guidance on the Consolidated Omnibus Budget Reconciliation Act (COBRA) subsidy created by the American Rescue Plan Act (ARPA).

As background, the ARPA subsidy covers 100% of COBRA and state mini-COBRA premiums from April 1 through September 30, 2021 for certain COBRA eligible individuals whose work hours were reduced (either voluntarily or involuntarily) or whose employment was involuntarily terminated. Employers pay the premium up front and are reimbursed through a tax credit on their quarterly taxes.

The much-anticipated guidance includes an overview and explanation of the subsidy, then provides responses to 86 Frequently Asked Questions (FAQs) covering the following topics:

- Eligibility
- Involuntary terminations
- Allowed types of coverage for assistance
- Beginning and ending period for assistance
- Extended election periods
- Application of state mini-COBRA rules
- Calculating and claiming the tax credit

The FAQs include several helpful examples. The full IRS notice can be found here, but a few highlights are provided below:

Calculating and claiming the tax credit

Of particular interest to employers are FAQs 71 through 86 which clarify (with examples) the process for obtaining the tax credits. Employers should review these FAQs and consult with their tax professional before filing. Highlights of this section include the following:

- An employer claims the credit by reporting the nonrefundable and refundable portions of the credit and the number of individuals receiving COBRA premium assistance on the designated lines of its federal employment tax return, usually Form 941 (Employer's Quarterly Federal Tax Return).
- In anticipation of receiving the credit to which it is entitled, an employer may:
    - reduce the deposits of federal employment taxes, including withheld taxes, that it would otherwise be required to deposit, up to the amount of the anticipated credit, and

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    - request an advance of the amount of the anticipated credit that exceeds the federal employment tax deposits available for reduction using Form 7200 (Advance Payment of Employer Credits Due to COVID-19).
- An employer should include the tax credit in its gross income.
- An employer may not claim a double benefit (double dip) for amounts that are taken into account as qualified wages under the CARES Act or the FFCRA.

Determining whether a Termination was Involuntary

Another challenging topic for employers has been determining whether an employee's termination was involuntary or voluntary. Thus FAQs 24 through 34 are particularly welcome. Highlights of this section include the following definition:

> "An involuntary termination of employment 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"

This section also clarifies that the determination of whether a termination is involuntary is based on the specific "facts and circumstances" and provides answers to several related questions including terminations due to:

- illness or disability
- retirement
- preemptive resignations
- gross misconduct
- geographic location changes
- severance arrangements and "window" programs
- workplace safety due concerns to a health condition
- school/child care issues due to pandemic
- voluntary termination due to involuntary reduction of hours
- death
- failure to renew contract for staffing agency employee

Types of Qualified Group Health Plans

The subsidy is available for COBRA continuation of any group health plan except a health FSA. This includes vision and dental plans and health reimbursement arrangements (HRAs)–including HRAs integrated with individual health coverage other than Medicare. Eligibility for coverage under an HRA will end subsidy eligibility in the same way as eligibility for coverage under any other group health plan, unless the HRA qualifies as a health FSA.

Note that qualified small employer HRAs (QSEHRAs) are not group health plans, and thus are not subject to COBRA or the subsidy.

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Additional information

For more information on ARPA and general rules about the COBRA subsidy, see our prior summary on the topic: *Biden American Rescue Plan Provides for COBRA Subsidies, Extends Premium Tax Credit, Paid Leave Tax Credit & More* and the following resources:

- DOL Releases ARPA COBRA Subsidy Notices: https://gbsbenefits.com/dol-releases-arpa-cobra-premium-subsidy-notices/
- **Watch Now:** American Rescue Plan Act COBRA Subsidies Webinar: https://gbsbenefits.com/watch-now-arpa-cobra-subsidies/

The COVID-19 epidemic is constantly evolving. The information in this document is based on what known at this time. As things change, we will continue to update you as it affects employee benefits compliance rules. This information is provided as educational material only and is not intended as legal, financial or tax advice. Consult your legal counsel for complete details on your compliance requirements for your plan(s).

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