



COBRA Subsidy Effects on Severance Programs and Employee Separations

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The American Rescue Plan Act of 2021 (ARPA) was signed into law on March 11, 2021. The ARPA, among other things, makes significant changes to COBRA administration by providing for additional COBRA enrollment rights and a temporary 100% COBRA premium subsidy from April 1, 2021 to September 30, 2021. These provisions apply to employees and former employees who lost group coverage due to involuntary termination of employment or an involuntary reduction in hours.

For an overview of the eligibility criteria and employer responsibilities relating to COBRA subsidies, please see our prior advisory, [“The Return of COBRA Subsidies: Flashbacks of 2009.”](#)

Changes to Employers’ Existing Practices and Severance Programs

The ARPA imposes several changes that may impact: (1) past, current, and future workplace separations, and (2) severance packages offered by employers for the next six months.

Prior Separations

Former employees who suffered an involuntary separation of employment **in the last 18 months**, including those who received severance packages, should now receive an updated notice of the ARPA subsidy and the special enrollment period even if they had already been issued a COBRA notice at the time of their termination and even if they declined COBRA continuation coverage.

Employees who are involuntarily separated between April 1, 2021, and September 30, 2021, should be provided with the notice of the ARPA subsidy with their COBRA notification.

Severance Packages

Employers that pay for a terminated employee's COBRA premiums as part of a severance program should understand that in most cases, during the next six months, this will no longer be a benefit which can serve as adequate consideration for a release of claims. Employees who are involuntarily terminated between April 1, 2021 and September 30, 2021, unrelated to gross misconduct, will be eligible for the subsidized COBRA premiums independent of any severance agreement or release unless they are eligible for other group insurance coverage.

Employer-paid COBRA benefits may remain valuable as consideration in severance packages for employees who voluntarily resign (since employees who voluntarily resign are not eligible for the subsidy), or for employees who are involuntarily terminated if the employer chooses to provide paid COBRA continuation coverage for a period longer than the mandatory six-month subsidy.

Other things to consider in light of the temporary COBRA subsidies include:

- Some severance agreement templates use language explaining that benefit coverage will end on a certain date and that continuation of coverage may be elected but will be at the employee's expense. This is no longer true for eligible individuals under the ARPA. Such language should be revised to reflect that eligible employees under the ARPA can sign up for COBRA coverage and will pay no premiums from April 1, 2021 through September 30, 2021.
- Employers also need to change their severance documents and related practices if the employer subsidizes some or all of the COBRA coverage. Under the ARPA, eligible employees do not have to pay any portion of the COBRA premium during the relevant period, so no cost-sharing by the employee can be required, and the employer's payment during the time period covered by the ARPA cannot be consideration for a release.
- Employers need to review severance agreements entered into **in the last 18 months** to determine whether part of the severance benefit included employer-paid COBRA premiums for months in the COBRA subsidy period. Agreements

whereby the employer pays the COBRA premiums directly to the carrier will not be impacted during the subsidy period. However, in cases where an employer promised to pay a former employee additional compensation to cover COBRA premiums or to reimburse COBRA premiums paid directly by the former employee, the COBRA subsidy rules require the employer to pay the premiums directly to the carrier during the subsidy period. Former employees eligible for the COBRA premium subsidy who elect COBRA continuation coverage are not required to pay any premiums for the coverage during the subsidy period.

Employers should review recent and current severance and separation issues and implement the above changes.

On April 7, the Department of Labor issued Frequently Asked Questions which address and clarify certain issues under the ARPA, along with model notices to send to former employees who were involuntarily terminated **within the last 18 months**. See [link here](#) for DOL's ARPA-related resources.

Please contact us if you need further information. Frost Brown Todd's [Employee Benefits](#) and [Labor and Employment](#) groups are available for assistance in construing and implementing these rules.

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