

Hot off the Press - DOL Issues COBRA Subsidy Model Notices

By: Lyndsey Barnett on April 7, 2021 on graydon.law

This morning the DOL issued the much anticipated [guidance](#) on the COBRA subsidies provided for in the American Rescue Plan Act (“ARPA”). There were not many surprises, but to see what we learned, check out this [post](#). To see what we already knew, check out our prior [post](#).

The DOL also issued the model notices that Congress mandated them to issue as part of ARPA (making their deadline with 3 days to spare). These notices can be used to help you satisfy your new notice requirements under ARPA. These notices are:

New General Notice - You should use this [notice](#) for any qualified beneficiary who loses coverage due to a reduction in hours or involuntary termination of employment with COBRA beginning at some point between April 1 - September 30 of this year. This notice may be provided as a supplement to your standard COBRA election notice or its terms may be incorporated into your COBRA election notice. The DOL issued an [alternative notice](#) for plans subject to state continuation coverage.

Second Election Notice - You should send this [notice](#) to all Assistance Eligible Individuals who are still in their 18-month COBRA window in April 2021. For plans that terminate coverage on the last day of the month, this will be anyone who was involuntarily terminated or lost coverage due to a reduction in hours on or after October 1, 2019. Employers must send this notice to Assistance Eligible Individuals before May 31st whether the individual is currently enrolled in COBRA, previously declined COBRA or enrolled and later dropped COBRA. This requirement does not apply to plans that are subject to state continuation requirements as there is no second election period for their participants under ARPA.

Notice of Expiration - You should use this [notice](#) to let Assistance Eligible Individuals know that their assistance will soon be expiring and that the individual may be eligible for unsubsidized COBRA, Medicaid or the Health Insurance Marketplace. You must send this notice to all Assistance Eligible Individuals 15 - 45 days before their COBRA subsidy will expire. You do not need to send this notice if the individual is losing the subsidy due to becoming eligible for other group health plan coverage or Medicare.

The new general or supplemental notice and the second election notice must include the following information:

- The forms necessary for establishing eligibility for the subsidy, which can be accomplished by including the [Summary of COBRA Premium Assistance and Request for Treatment as an Assistance Eligible Individual Form](#);
- Contact information for the plan administrator (usually the employer) or other party maintaining the relevant information about the subsidy;
- A description of the second election period (if applicable);
- A description of the Assistance Eligible Individual's requirement to notify the plan if they become eligible for other group health coverage or Medicare and the penalty for not doing so;
- A description of the right to receive the subsidy and the conditions for receipt; and
- A description of the option to enroll in a different coverage option (if permitted by the employer).

In this guidance, the DOL clarified that the COVID relief on timing of providing notices under EBSA Disaster Relief Notice 2021-01 does not apply to the notice and election periods related to the COBRA subsidy of ARPA. A failure to send any of the above required notices could result in an excise tax of up to \$100 per qualified beneficiary not to exceed \$200 per family, for each day that the notice is late or not provided.

Even before the COBRA subsidy, COBRA litigation has been on the rise and we have been [recommending](#) to clients that their forms be reviewed for general compliance. If you haven't had your forms reviewed in a few years, we highly recommend that you do so as part of this process.

If you are using a COBRA Administrator, you cannot just assume that they are handling all of this for you. You should reach out to them to see what they are assisting you with and what you are still responsible for. At a minimum, you will need to let them know who was involuntarily terminated as they likely won't have that record. Also, remember that ultimately the penalties for non-compliance are on you as the plan sponsor even if you are using a third-party COBRA administrator.

The COBRA subsidy is complicated. If you have questions or would like help revising your forms, please contact a Graydon Benefits attorney.