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COBRA help, dependent care items in COVID-19 bill near enactment

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Subsidized COBRA coverage, more generous tax benefits for employer-provided dependent care assistance, enhanced tax credits for employers providing emergency paid sick and family leave, and increased Affordable Care Act (ACA) subsidies for health coverage feature in COVID-19 aid legislation heading for President Biden's signature after House approval March 10. Other provisions in the nearly $2 trillion American Rescue Plan Act (HR 1319) provide extended federal unemployment benefits, direct stimulus payments to many Americans, monies for state and local governments, and additional funding COVID-19 testing, tracing, and vaccine distribution. The president will sign the bill within days.

Relief measure enacted without bipartisan support

Since the pandemic began, Congress has passed a series of relief bills containing a broad array of employee benefit and workplace provisions. These measures include the roughly $900 billion package enacted with bipartisan support in December, the Consolidated Appropriations Act (CAA) of 2021 (Pub. L. No. 116-260).

With new control of the Senate and White House this year and Republicans urging a smaller bill, Democrats muscled the latest aid package without any GOP support using budget reconciliation rules. Those rules allow legislation to pass with a simple majority vote in the Senate rather than the usual 60-vote threshold. After a series of internal disputes over efforts to raise the federal minimum wage and other issues, Democrats ultimately rallied around President Biden's first legislative push.

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Fully subsidized COBRA premiums and new notice requirements

The American Rescue Plan Act fully subsidizes premiums for COBRA health coverage from April 2021 through September 2021 and requires special COBRA election periods and extensive new COBRA notices.

COBRA subsidy

The bill provides a 100% subsidy for COBRA continuation coverage for "assistance eligible individuals" — that is, COBRA qualified beneficiaries. This group includes any employees along with their spouses and dependent children who lose (or lost) group health plan coverage due to the employee's involuntary termination of employment or reduction of work hours and elect (or elected) COBRA coverage. Other COBRA qualifying events causing of a loss of coverage, such as voluntary termination of employment, death of a covered employee or a dependent aging out, won't qualify for a subsidy. Subsidy-eligible COBRA coverage can include hospital and major medical coverage as well as dental and vision plans, but not health flexible spending arrangements (FSAs).

The premium assistance will be available from April 1, 2021, through Sept. 30, 2021, regardless of whether COBRA coverage began earlier or ends later. The subsidy will end sooner than September for qualified beneficiaries whose maximum COBRA coverage period ends earlier (as measured from the date of the original COBRA qualifying event) or who become *eligible* for another group health plan (other than excepted benefits) or Medicare.

Subsidy-eligible individuals electing coverage pay no portion of the premium for health coverage. Employers and plans that comply with certain reporting requirements will receive refundable tax credits equal to the premiums that individuals otherwise would have owed. The credit will be provided by the Treasury Department through a reduction of Medicare payroll taxes.

Employers may (but are not required to) allow assistance-eligible individuals to switch to less-expensive coverage other than an option that provides only "excepted benefits" (e.g., dental or vision coverage), a health FSA, or an individual-coverage health reimbursement arrangement. For any month assistance-eligible individuals receive a COBRA subsidy, they cannot claim the Health Coverage Tax Credit that's otherwise available to certain trade-displaced workers and Pension Benefit Guaranty Corp. payees.

New COBRA election and notice periods

A 60-day special election period is available to assistance-eligible individuals who haven't exhausted their original 18-month COBRA period and either did not elect COBRA when first eligible or elected COBRA but dropped it before April 1, 2021. COBRA elected during this special period, which runs for 60 days after the date the plan administrator provides assistance-eligible individuals the new required COBRA notice, will not extend beyond the individual's normal COBRA continuation period. An assistance-eligible individual who did not initially elect COBRA, or who elected but dropped COBRA coverage prior to April 1, may receive the subsidy on a prospective basis, without having to elect and pay for COBRA retroactively for months prior to the subsidy becoming available.

Within 60 days of April 1, 2021, employers' COBRA notices will have to include information about the availability of the subsidy and the special 60-day enrollment period for qualified beneficiaries. This information may be added to current COBRA notices or provided in a separate document accompanying the current notice. The legislation sets out content for these notices and directs the Labor secretary to publish model notices within 30 days of the bill's enactment. Employers will also have to provide a notice of expiration before the premium subsidy expires.

Increased income exclusion for dependent care programs for 2021

The bill increases the income exclusion for employer-provided dependent care assistance programs — for example, employee pretax contributions to dependent care FSAs — from $5,000 to $10,500 (and from $2,500 to $5,250 for a married individual filing a separate return) for 2021.

In addition, the bill significantly increases the value of the dependent care tax credit for 2021. The credit is fully refundable, and the maximum credit percentage increases to 50% (from 35%). The credit percentage gradually phases down to 20% for individuals with incomes between $125,000 and $400,000, and further phases down by 1 percentage point for each $2,000 (or fraction thereof) by which an individual's adjusted gross income exceeds $400,000. The amount of expenses eligible for the credit increases to $8,000 (from $3,000) for one qualifying individual and $16,000 (from $6,000) for two or more qualifying individuals (so the maximum credits would be $4,000 and $8,000).

Emergency sick and family leave changes

The rescue plan extends and increases the employer tax credits for emergency paid sick and family leave, first enacted last year by the Families First Coronavirus Response Act (FFRCA) and then extended to March 31, 2021, by the 2021 CAA. The new measure raises the limits on tax credits to offset leave costs for affected employers (fewer than 500 employees) and extends the availability of the credits through Sept. 30, 2021. The tax credits can also offset employers' costs for paid leave taken for COVID-19 vaccinations and related health issues. While the bill extends the availability of the employer tax credit, it does not extend the FFRCA mandate to provide paid leave for employees.

Increased ACA marketplace subsidies for 2021 and 2022

The legislation fully subsidizes ACA marketplace coverage for individuals earning up to 150% of the federal poverty level and anyone receiving unemployment insurance in 2021. The measure also expands subsidy eligibility to individuals earning more than 400% of the federal poverty level and caps their premium costs at 8.5% of household income. This subsidy expansion will last for taxable years beginning in 2021 or 2022. The bill makes no changes to the ACA's employer shared-responsibility requirements. Therefore, for employers to avoid potential shared-responsibility assessments, an ACA full-time employee's required contribution for the employer's lowest-cost, self-only option that provides minimum value must not exceed 9.83% (adjusted annually) of the employee's household income in 2021 or an affordability safe harbor.

Expanded employee retention credit

The legislation extends from June 30, 2021, to Dec. 31, 2021, the employee retention credit enacted by the Coronavirus Aid, Relief and Economic Security (CARES) Act (Pub. L. No. 116-136) and subsequently modified and expanded by the 2021 CAA. The extended credit also is restructured as a refundable payroll tax credit against the employer's share of Medicare taxes instead of Social Security taxes. The credit will continue to equal 70% of qualified wages (including allocable qualified health plan expenses) paid to employees by eligible employers. The scope of the credit varies by employer size.

Related resources

Non-Mercer resources

- HR 1319, the American Rescue Plan Act (March 6, 2021)

Mercer Law & Policy resources

- Roundup: COVID-19 resources for employers (regularly updated)
- Pension funding relief, union plan reforms in aid bill near enactment (March 10, 2021)
- Deadline relief continues for health plans and participants (March 4, 2021)
- Tracking federal COVID-19 laws affecting employee benefits, jobs (Feb. 1, 2021)
- DOL and IRS issue COVID-19 guidance on emergency paid leave (Jan. 15, 2021)
- CARES Act expands unemployment benefits, aims to stem job losses (April 15, 2020)
- CARES Act boosts telehealth, makes other health, paid leave changes (March 27, 2020)
- Virus aid legislation includes cost-sharing curbs, new leave rights (March 18, 2020)

Other Mercer resources

- Navigating coronavirus (regularly updated)
- IRS clarifies FSA relief in CAA, provides more flexibility for cafeteria plan elections (Feb. 25, 2021)

- Big news for employers — long-sought answers on how to handle unused 2020 FSA balances and much more! (Dec. 23, 2020)

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