

Insights

American Rescue Plan Act Welfare Plan Issues

March 30, 2021

By: Mark P. Canada and Janice L. Hamilton

COBRA Continuation Coverage

The American Rescue Plan Act ("ARPA") impacts employers sponsoring certain group health plans in multiple ways, but the primary impact is to: (1) provide a six-month premium subsidy for selected COBRA qualified beneficiaries and (2) create special enrollment rights for those same individuals. These new rights are to be given to Assistance Eligible Individuals ("AEIs"). Generally, AEIs are individuals who are eligible for COBRA coverage due to a reduction in their hours of employment or due to an involuntary termination of employment.

1. Six-month Premium "Subsidy"/Waiver. AEIs who receive COBRA coverage for any month from April 1, 2021 through September 30, 2021 will be treated as having paid their premiums for any coverage during that six-month period. Premiums inadvertently collected must be returned.
2. Special Enrollment Rights. AEIs who failed to elect COBRA coverage before April 1, 2021 or who dropped coverage before that date will have the right to make a special COBRA coverage election from April 1 to May 30, assuming the plan administrator provides timely election information and forms. Coverage elected or reelected will start April 1 and end on the date that their COBRA coverage would normally have been scheduled to end.

Subject to guidance from the DOL, this mean that AEIs not on COBRA now, but who would have been covered in April had they elected or not dropped coverage the normal COBRA rules, must be allowed to make a special enrollment election. Employers should note that someone making a special election may extend coverage beyond the September 30th subsidy cut-off date if their normal COBRA coverage period would extend beyond that date. For instance, someone who was involuntarily terminated in January, 2021 and did not elect COBRA coverage then, could elect COBRA coverage during this special enrollment period. If elected, the coverage would run for 18 months from the triggering event and would not end on September 30, 2021.

3. Early Termination of Premium Waiver. The premium waiver will cease when the AEI becomes eligible for coverage under another qualifying group health plan or Medicare or, if earlier, the date the AEI's COBRA coverage ends.

4. Notices. Under the new law, plan administrators of group health plans will be obligated to provide notices to AEIs of:

- The new premium waiver.
- The special COBRA election rules.
- The expiration of the premium waiver (during the period beginning 45 days before and ending 15 days before the expiration date).
- The AEIs' obligation to notify the plan administrator of their eligibility for coverage under another group health plan or under Medicare and the penalties for failing to do so.

The Department of Labor is required to provide additional guidance, including model notice language by April 10th.

5. Tax Features. Under ARPA, AEs will not be taxed on the premium amounts waived under the new law. In addition, to compensate employers for the cost of the premium waiver, they are given a Medicare payroll tax credit equal to the premium waiver amount.

Dependent Care Assistance Plans (DCAPS)

ARPA also provides a one-time increase to the annual contribution limit for Dependent Care Assistance Plans (“DCAPs”), also known as dependent care flexible spending accounts, for the 2021 calendar year. Generally, the amount that may be excluded from an employee’s taxable income for DCAP benefits is limited to \$5,000 (or \$2,500 for married individuals filing separately). Under ARPA, the 2021 limit is increased to \$10,500 (or \$5,250 for married individuals filing separately).

Elections under cafeteria plans are irrevocable and generally must be made prior to the first day of the plan year unless there is a change in status (as provided under **Treasury Regulation §1.125-4**) or a significant change in the cost of coverage. The Consolidated Appropriations Act, 2021, enacted on December 27, 2020, allows plans to permit employees to make prospective mid-year changes to DCAP elections for plan years ending in 2021, regardless of any change in an employee’s status. This includes making a new election as well as increasing, decreasing or revoking an existing election.

Employers who wish to permit the increased DCAP limit must amend their plan documents no later than December 31, 2021 (although the increased limit may be implemented immediately). Additionally, employers must also amend their documents to allow for the mid-election change, if they have not already done so.

Employers should communicate the mid-year election change opportunity and increased limit to its eligible employees.

If you would like more information about these provisions or need assistance drafting COBRA notices or mid-year election DCAP notices for plan participants, please contact **Mark Canada** or another member of the **Krieg DeVault Employee Benefits & Executive Compensation Practice Group**.