

COVID-19 coronavirus

For Companies Affected by the COVID 19 Virus Pandemic

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American Rescue Plan Act of 2021

What are the implications for employers?

The American Rescue Plan Act of 2021 (the “Act”) became law on March 11, 2021, and its text can be read here: <https://www.congress.gov/bill/117th-congress/house-bill/1319/text> . The table of contents for this Act goes on for perhaps 10 pages, as was necessary to list all that is in this \$1.9 Trillion Act. Employers may be impacted in several ways, including increased U.S. Department of Labor funding, extensions of funding for unemployment benefits, and extended tax credits for employers under the FFCRA. The Act contains numerous health insurance and employer-specific provisions, none of which are addressed on this webpage; please refer to the Act itself for more information.

How will increased U. S. Department of Labor funding impact employers?

The pertinent portion of the Act apportions: “\$200,000,000, to remain available until September 30, 2023, for the Wage and Hour Division, the Office of Workers’ Compensation Programs, the

Office of the Solicitor, the Mine Safety and Health Administration, and the Occupational Safety and Health Administration to carry out COVID-19 related worker protection activities, and for the Office of Inspector General for oversight of the Secretary's activities to prevent, prepare for, and respond to COVID-19." In other words, the Wage-Hour Division and OSHA will have most of that \$200 Million to spend on enforcement activities in the next two and a half years. In response, it would be a good time for employers to review their compliance with regulations issued by the Wage-Hour Division under the Fair Labor Standards Act and regulations issued by OSHA under the Occupational Safety and Health Act.

What are the unemployment compensation supplemental payments and how have they been extended?

"Pandemic Unemployment Assistance" was extended to 79 weeks from 50 weeks. Instead of ending on March 14, 2021, this program will end on September 6, 2021. The Act provides for Federal Government payments to States to supplement State unemployment benefits at the rate of \$300 per week per claimant (see discussion of this program under the Section above that discusses the CARES Act). The Act also gives a retroactive tax break to recipients of unemployment insurance benefits: recipients who earned less than \$150,000 are not required to include the first \$10,200 of unemployment benefits as income for the 2020 tax year.

What are the new FFCRA tax credits?

The Act extended the FFCRA tax credits available to employers which have fewer than 500 employees through September 30, 2021. Employers are no longer (as of January 1, 2021) required to grant FFCRA leave, but employers may offer leave for qualifying reasons and take the tax credits just as they did under the original FFCRA. Starting on April 1, 2021, the Act provides 10 additional days of paid COVID-19 leave for which the tax credit may be recovered (if an employer has elected to provide this leave); an employee who has exhausted previous COVID-19 leave under the FFCRA can (if the employer has elected to provide it) use additional leave between April 1, 2021, and September 30, 2021, and the tax credit will be available to the employer. The aggregate cap for tax credits for COVID-19 leave was extended from \$10,000 to \$12,000 per employee.

What are the new COBRA subsidies?

The Act includes a temporary government subsidy of COBRA (Consolidated Omnibus Budget Reconciliation Act) premiums for "assistance eligible individuals." The subsidy is equal to 100% of COBRA premiums for eligible individuals, beginning on April 1 and ending on September 30, 2021 (the "Subsidy Period"). Eligible individuals are those who (a) were eligible for COBRA, (b) were terminated involuntarily or had their hours involuntarily reduced that resulted in a loss health insurance coverage, and (c) elected COBRA coverage during the Subsidy Period. The Act imposes notice requirements on plan administrators, including notices that must be provided to individuals who became eligible for COBRA coverage before the beginning of the Subsidy Period. Plan sponsors can get tax credits for the premiums that eligible individuals do not pay

during the Subsidy Period; these tax credits can be claimed similarly to the tax credits allowed under the FFCRA and CARES Act. The Employee Benefits Security Administration has published FAQs that are available at: <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>

What forms do I use for notifying eligible individuals of the new COBRA subsidies?

Model notices are now available from the U.S. Government:

- General Notice and Election Notice, available at: <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-general-and-election-notice.pdf>
- Notice in Connection with Extended Election Period, available at: <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-extended-election-periods-notice.pdf>
- Alternative Notice, available at: <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-alternative-election-notice.pdf>
- Notice of Expiration of Premium Assistance, available at: <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/notice-of-premium-assistance-expiration-premium.pdf>
- Summary of the COBRA Premium Assistance Provisions, available at: <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/summary-of-provisions.pdf>

Section 9501 of the Act requires plan sponsors to provide notices to eligible individuals who (a) became entitled to elect COBRA before April 1, 2021, (b) did not have a COBRA election in effect on April 1, 2021, but who would be eligible if COBRA had been elected, or (c) who previously elected COBRA and discontinued coverage before April 1, 2021. The notice must be provided before May 1, 2021, and must include (quoting the Act):

(i) the forms necessary for establishing eligibility for premium assistance under this subsection;

(ii) the name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with such premium assistance;

(iii) a description of the extended election period provided for in paragraph (4)(A);

(iv) a description of the obligation of the qualified beneficiary under paragraph (2)(B) and the penalty provided under section 6720C of the Internal Revenue Code of 1986 for failure to carry out the obligation;

(v) a description, displayed in a prominent manner, of the qualified beneficiary's right to a subsidized premium and any conditions on entitlement to the subsidized premium; and

(vi) a description of the option of the qualified beneficiary to enroll in different coverage if the employer permits such beneficiary to elect to enroll in such different coverage under paragraph (1)(B).

Plan administrators must also notify individuals who are receiving the COBRA subsidy that the COBRA subsidy will expire on September 30, 2021. There is no requirement to provide this notice of subsidy expiration to individuals who become eligible for coverage under another employer's group health plan or Medicare. The notice must be provided between 45 and 15 days before the COBRA subsidy is set to expire (or between August 16, 2021, and September 15, 2021).