



PHILLIPS LYTLE LLP CLIENT ALERT

EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION

MAY 2021



May 31, 2021 Deadline for Mandatory Notice of the Extended COBRA Election Period Under the American Rescue Plan Act

The American Rescue Plan Act of 2021 (ARPA) subsidizes the Consolidated Omnibus Budget Reconciliation Act (COBRA) premiums for “Assistance Eligible Individuals” for COBRA coverage between April 1, 2021 and September 30, 2021. “Assistance Eligible Individuals” are group health plan beneficiaries who:

- Have a COBRA qualifying event that is a reduction in hours or an involuntary termination of employment;
- Elect COBRA continuation coverage;
- Are not eligible for Medicare; and
- Are not eligible for coverage under any other group health plan (e.g., a plan sponsored by a new employer or a spouse’s employer).

For details regarding the ARPA, consult Phillips Lytle’s client alert: [“American Rescue Plan Act Mandates Temporary Subsidy of COBRA Premiums and Provides 100% Tax Credit.”](#)

Under the ARPA, by May 31, 2021, group health plans must issue a notice of the extended COBRA election period to any Assistance Eligible Individual (as well as those who would be Assistance Eligible Individuals, if they had elected and/or maintained COBRA continuation coverage) who had a reduction in hours or an involuntary termination of employment before April 1, 2021. However, this notice requirement does not apply to individuals whose COBRA coverage period (generally 18 months) ended, or would have ended, before April 1, 2021. (Generally, the notice

requirement does not apply to an individual whose reduction in hours or involuntary termination occurred before October 1, 2019.) Also, this notice requirement does not include individuals who had, or will have, a qualifying event on or after April 1, 2021 and before September 30, 2021 (these individuals are subject to the [Model ARP General Notice and COBRA Continuation Coverage Election Notice](#)).

Failure to provide the extended COBRA election period notice by May 31, 2021 to individuals whose COBRA rights arose from a reduction in hours or involuntary termination occurring before April 1, 2021 (and generally after September 30, 2019) may subject the employer who sponsors the group health plan to an excise tax penalty of \$100 per affected individual per day. Accordingly, we urge employers to give this matter their prompt attention if they have not already done so. Failure to provide the notice will be treated as a failure to meet the notice requirements under COBRA. The U.S. Department of Labor (DOL) has developed model notices, including the [Model COBRA Continuation Coverage Notice in Connection with Extended Election Periods](#), available on the [DOL website](#).

Additional Assistance

For further assistance, please contact any of the attorneys on our [Employee Benefits & Executive Compensation Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■



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