American Rescue Plan Includes Key Employee Benefit Changes

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Employee Benefits

As a result of new changes in the law, employers sponsoring group health plans may need to act quickly to make plan design decisions and to meet new notice requirements, as explained below. Moreover, new funding relief is available for employers sponsoring a defined benefit pension plan.

Specifically, on March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 ("ARPA"), designed primarily to provide financial relief to millions of Americans as a result of the ongoing COVID-19 pandemic. Within the ARPA are three key changes affecting employer-sponsored employee benefit plans: (1) six months of fully-subsidized COBRA continuation coverage premium payments; (ii) increased dependent care flexible spending account maximum benefit amounts; and (iii) single employer defined benefit plan funding relief.

COBRA Premium Subsidy

A new federal subsidy is now available, covering 100% of the premiums for COBRA continuation coverage in certain situations. Employers sponsoring self-funded group health plans will receive the subsidy in the form of a credit against payroll taxes. In the case of a fully-insured group health plan, the applicable health insurer will receive the subsidy.

Assistance Eligible Individuals

More specifically, any COBRA continuation coverage premium for an "assistance eligible individual" ("AEI") will be treated as having been paid in full for coverage periods between April 1, 2021 and September 30, 2021. An AEI is any individual that is eligible for COBRA pursuant to a termination of employment (except for voluntary terminations) or reduction of hours of employment. However, the subsidy will end earlier if the AEI becomes eligible for any other group health coverage (which is not vision, dental, or Medicare supplemental benefits, health flexible spending accounts, qualified small employer health reimbursement arrangements, or Medicare) or the AEI's COBRA continuation coverage maximum period otherwise expires. The AEI has an affirmative obligation to notify the group health plan if he or she becomes eligible for subsidy-disqualifying coverage, and failure to do so could subject the AEI to a penalty of at least $250. The ARPA directs the Department of Labor to issue guidance on the time and manner of the notification of disqualifying coverage.

Optional Coverage Changes

If permitted by the plan sponsor, an AEI may elect to enroll in coverage offered under a plan sponsored by the plan sponsor that is different from the coverage the individual is enrolled in at the time (provided such coverage is not vision, dental, or Medicare supplemental benefits, a health flexible spending account, or a qualified small employer health reimbursement arrangement). In addition, the premium for the different coverage may not exceed the premium for coverage in which the AEI was enrolled at the time of the qualifying event. The AEI has 90 days after the date of notice of this plan enrollment option to make such election.

Extended Election Period

The ARPA extends the period for electing COBRA continuation coverage. Specifically, if an AEI either had not initially elected COBRA, or had discontinued previously-elected COBRA coverage prior to the start of the subsidy period, the AEI may elect COBRA between April 1, 2021 and 60 days after the date the AEI is notified of the election period. If elected, the COBRA continuation coverage will commence April 1, 2021 and will end as of the date the COBRA continuation coverage would otherwise have expired.

Enhanced Notices

Plan administrators (or COBRA administrators, if applicable) will need to either amend the existing election notice or include a separate document with the existing notice, including:

- The forms necessary for establishing premium assistance under ARPA;
- 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;
- A description of the extended election period created by ARPA;
- A description of the obligation of the qualified beneficiary to notify the group health plan if he or she becomes eligible for such other coverage, and the penalty for failure to carry out the obligation;
- A description of the individual's right to a subsidized premium and any conditions on entitlement to the subsidized premium; and
- A description of the option of the individual to enroll in different coverage if the employer permits.

Plan administrators (or COBRA administrators, if applicable) will need to issue the new notice information to any AEI or to any individual otherwise entitled to the extended election period who became entitled to elect COBRA prior to April 1, 2021 no later than May 31, 2021.

Additionally, plan administrators (or COBRA administrators, if applicable) will also need to issue to an AEI a written notice explaining that the premium assistance will soon expire (including a prominent identification of the expiration date) and that the AEI may be eligible for coverage without any premium assistance through COBRA continuation coverage or a group health plan. However, the administrator need not provide such notice if the AEI becomes eligible for other group health coverage. The expiration notice must be provided between 15 and 45 days before the expiration of the premium subsidy.

The Department of Labor will prescribe model notices for the additional notification requirements and is also directed to issue interpretive rules with the Department of Treasury. As a result, additional administrative guidance should be coming shortly.

Takeaways

Sponsors of group health plans will need to take quick action (in coordination with their COBRA administrators, if applicable) to:

- Decide whether to permit AEIs to elect different coverage;
- Depending on the level of detail concerning COBRA continuation coverage, amend governing documents to account for the extended election period and (if selected) the coverage change option; and
- Issue the enhanced election notice.

Dependent Care FSA Increase

The ARPA implements a one year increase in the dependent care flexible spending account maximum allowable amount. Specifically, in the case of any taxable year beginning after December 31, 2020 and before January 1, 2022, the limit on a dependent care flexible spending account will rise to $10,500 (or half that amount in the case of a separate return by a married individual), up from $5,000 (or $2,500 in the case of a separate return by a married individual).

If a plan sponsor opts to implement the increase and that change requires a plan amendment, the plan sponsor must adopt the amendment by the last day of the plan year in which the amendment is effective. However, please note that some plan document provisions and annual election forms may already cross-reference the maximum statutory amount. Therefore, by operation of law, the plan may already account for the increase; in which case, plan sponsors will need to communicate the maximum increase to impacted participants.

Defined Benefit Plan Funding

The ARPA includes several provisions designed to provide employers funding relief for single-employer defined benefit plans:

- For plan years beginning after December 31, 2021 (or, at the election of the plan sponsor, plan years beginning after December 31, 2018, December 31, 2019, or December 31, 2020), the shortfall amortization bases for all plan years preceding the first plan year beginning after December 21, 2021 (or the earlier elected year) will be reset to zero.
- In addition, the new amortization base for payment of a funding shortfall will cover a 15-year period as opposed to a 7-year period.
- Finally, funding stabilization measures have been extended.

Plan sponsors should consult with designated plan actuaries about the funding impact of the new relief measures.

Please contact the author of this alert or your Employee Benefits attorney at Butzel Long for help in ensuring compliance with these new legal requirements and permitted options.

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