



# American Rescue Plan Act: Key Benefits Provisions



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# Agenda

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- DOL Disaster Relief from 2020
- Third Stimulus Bill – American Rescue Plan Act, 2021 (ARPA)
  - 100% COBRA Subsidy from April 1, 2021 – September 30, 2021
  - FFCRA Paid Leave Extended and Enhanced
  - Dependent Care Assistance Program Limit Increase for 2021
  - Premium Tax Credit Enhancements (2021 and 2022)
- COVID-19 Vaccine Considerations

# DOL / EBSA Disaster Relief

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## National Emergency from 2020 still in effect

- Timeframes and deadlines for participants to notify the plan of HIPAA special enrollment events and COBRA qualifying events, among others, still suspended during the “outbreak period”
- *Outbreak period*: March 1, 2020, until 60 days after the end of the National Emergency, or such other date announced by the DOL
- Latest guidance: DOL interprets relief to apply on an individual basis
  - Individuals may take advantage of relief until the earlier of (a) one year from the date they were first eligible for relief, or (b) 60 days after the announced end of the National Emergency (the end of the Outbreak Period)

# Third Stimulus Package – American Rescue Plan Act (ARPA)

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- COBRA Subsidy
- ARPA provides significant assistance to employees and their families who are eligible for COBRA (or state mini-COBRA) due to an involuntary termination of employment or reduction in hours
- The law provides a 100% subsidy for COBRA premiums from April 1, 2021, through September 30, 2021
- The subsidy applies to group health plans other than health FSAs
- Employers who are subject to COBRA under ERISA (private employers) or the PHS Act (state and local governmental employers) are responsible for complying with the COBRA subsidy provisions
  - Insurance companies are responsible for complying with the COBRA subsidy provisions for insured group health plans that are not subject to federal COBRA

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- The subsidy applies to an “assistance eligible individual” (AEI) who is any COBRA qualified beneficiary who is eligible for, and elects, COBRA during the period of April 1, 2021, through September 30, 2021, due to an involuntary termination of employment or reduction in hours
- AEIs must be offered at least a 60-day window to elect COBRA
  - The 60-day period begins April 1, 2021, and ends 60 days after the date the notice is provided to the individual
  - AEIs include individuals in their COBRA election period, and individuals who would be AEIs but whose COBRA coverage lapsed prior to April 1, 2021
- Note: Many AEIs are still in their (extended) COBRA election period

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- COBRA elected during subsidy period will be effective April 1, 2021
  - Employees not required to elect retro to the date of their qualifying event
- Employers will be entitled to an advanceable, refundable tax credit against Medicare payroll taxes (1.45%) to pay for coverage during the subsidy period
  - IRS will provide forms and instructions for employers to apply for the credit
- Additional DOL guidance and model forms available:  
<https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>

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- The subsidy is available until the first to occur of:
  - the qualified beneficiary becoming **eligible** for other group health plan coverage
    - Other than coverage consisting only of excepted benefits, such as dental or vision, coverage under a health FSA, or coverage under a qualified small employer health reimbursement arrangement (QSEHRA);
  - the qualified beneficiary becoming **eligible** for Medicare;
  - the end of the qualified beneficiary’s maximum COBRA duration; or
  - September 30, 2021

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- Qualified beneficiaries who fail to notify the plan that they are no longer assistance-eligible can be liable for a \$250 penalty, which may be waived if the failure was due to reasonable cause and not willful neglect
  - Intentional failure can result in penalty of 110% of the amount of premium assistance
- Employers may allow currently enrolled AEIs to select new plans
  - An AEI may be provided 90 days to elect a different plan, if:
    - the premium for the different coverage is not greater than the current premium;
    - the different coverage is also offered to similarly situated active employees; and
    - the different coverage is not coverage consisting only of excepted benefits



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## ■ General Notice / Notice of Subsidy Availability

- Individuals who become eligible to elect COBRA during the subsidy period must be provided a notice that describes availability of premium assistance
- The notice requirement may be satisfied by amending existing notices or by including a separate attachment
- Model available for plans subject to state mini-COBRA
  - Small employers should check with carrier before sending
  - Notice of Extended Election Period and Notice of Subsidy Expiration may not apply to state mini-COBRA

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- *Notice of Extended Election Period*
- AEs must be offered at least a 60-day window within which to elect COBRA coverage
  - The 60-day period begins April 1, 2021, and ends 60 days after the date the notice is provided to the individual
  - This includes:
    - individuals terminated on or after April 1, 2021;
    - individuals in their COBRA election period on April 1, 2021 (including any COVID-19-related extensions); and
    - individuals who would be AEs but whose COBRA coverage lapsed prior to April 1, 2021

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- *Notice of Subsidy Expiration*

- Informs AEs that the subsidy period is ending
- The notice must disclose that:
  - premium assistance will expire soon and the date of such expiration; and
  - the individual may be eligible for coverage without any premium assistance through COBRA or coverage under a group health plan
- The subsidy expiration notice is not required if the subsidy is ending due to the individual becoming eligible for another group health plan or Medicare
- This notice must be provided not more than 45 days but no less than 15 days before the premium assistance ends



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## ■ *Summary of the COBRA Premium Assistance Provisions*

- Attach to the model general notice and notice of extended election period
- The Summary contains important information about the rules for premium assistance
- To apply, AEIs must complete the “Request for Treatment as an AEI” form within the Summary and return it to their plan or employer
- AEIs who have not yet elected COBRA may send this form along with their election form
- AEIs already enrolled in COBRA may send this form in separately

# Third Stimulus Package – American Rescue Plan Act (ARPA)

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- Which employees should receive a Notice?
  - An employee (and their qualified beneficiaries) with a COBRA start date on or after November 1, 2019, would have one or more months of eligibility for the COBRA subsidy
  - Therefore, employers should identify any employees involuntarily terminated or whose hours were reduced on or after October 1, 2019, as potential AEIs
  - **Note:** Election Notices / Notices of Extended Election Period must be sent by May 31, 2021
    - Additional IRS guidance forthcoming

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- Additional DOL Guidance
  - ARPA Premium Assistance interaction with ACA Premium Tax Credits (PTC)
  - COBRA subsidy due to involuntary termination: Does not disrupt PTC eligibility
  - COBRA subsidy due to reduction in hours: Disrupts PTC eligibility
    - Individual with reduction in hours must take COBRA subsidy instead of PTC credit
- HHS confirmed that participants have a 60-day special enrollment period for Marketplace coverage when subsidized coverage ends
  - Applies when COBRA coverage was paid for or subsidized, in whole or in part, by an employer or a government entity

# Third Stimulus Package – American Rescue Plan Act (ARPA)

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- FFCRA Paid Leave Extended and Enhanced
  - Voluntary for employers; tax credits available through September 30, 2021
  - FFCRA tax credits are available to employers with less than 500 employees
- 10-day limit for Emergency Paid Sick Leave resets on April 1, 2021
  - Employees were previously limited to 80 hours from April 1, 2020, through March 31, 2021
  - Emergency Paid Sick Leave continues to be limited to \$511 per day (\$5,110 total) for an employee’s own illness or quarantine (paid at the employee’s regular rate), and \$200 per day (\$2,000 total) for leave to care for others (paid at two-thirds of the employee’s regular rate)

# Third Stimulus Package – American Rescue Plan Act (ARPA)

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- New events are added under both the EPSL and E-FMLA provisions
- Employees qualify for FFCRA leave if they are unable to work or telework because they are:
  - seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19, and the employee has been exposed to COVID–19 or the employee’s employer has requested such test or diagnosis;
  - obtaining immunization related to COVID–19; or
  - recovering from any injury, disability, illness, or condition related to such immunization



# Third Stimulus Package – American Rescue Plan Act (ARPA)

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- Leave under the E-FMLA provision is increased from \$10,000 to \$12,000, with \$12,000 being the maximum an employer may claim for an employee in 2021
- Leave under the E-FMLA provision is expanded to be available for any EPSL-qualifying reason (*including the new vaccine-related reasons*), which is when an employee is unable to work or telework because the employee:
  - is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
  - has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
  - has COVID-19 symptoms and is seeking medical diagnosis;
  - is caring for an individual who is subject to a quarantine or isolation order;
  - is caring for a child if the school or day care center has been closed, or the child-care provider is unavailable, due to COVID-19 precautions; or
  - is experiencing any other substantially similar condition specified by the regulatory agencies

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- E-FMLA leave taken on or after April 1, 2021, is not subject to the 10-day elimination period that applied previously under FFCRA
- An employee’s eligibility for E-FMLA in 2021 may depend on when they used E-FMLA previously and how the employer establishes its 12-month FMLA period (e.g., calendar year, fixed period, measure-forward, or “rolling” 12 months)
- For leave taken on or after April 1, 2021, the employers may take a credit against Medicare payroll tax only (1.45%); however, the credit continues to be advanceable and refundable
  - ESPL and E-FMLA credits are available for qualified health plan expenses and for the employer’s share of Medicare and Social Security taxes

# Third Stimulus Package – American Rescue Plan Act (ARPA)

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- ARPA clarifies that refundable credits may be received by state and local governments that are tax exempt under Code 501(a)
- ARPA adds a new nondiscrimination requirement that eliminates the credit for any employer that discriminates in favor of highly compensated employees, full-time employees, or employees based on tenure

# Third Stimulus Package – American Rescue Plan Act (ARPA)

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- Dependent Care Assistance Program Limit Increase
- ARPA increases the DCAP exclusion from \$5,000 to **\$10,500** for 2021
  - From \$2,500 to \$5,250 in the case of a separate return filed by a married individual
  - Employees may elect to increase their DCAP election to the newly available \$10,500 limit for 2021 (based on the relief in Notice 2021-15)
  - Relief applies for calendar year 2021; plans must be amended by the end of the 2021 plan year to take advantage of the increased exclusion limit
  - Notice 2021-26 provides that carryover/extended grace period amounts are excluded from income in the year in which they were contributed, so a participant could have an account balance of \$15,500 that can reimburse expenses incurred in 2021 on a non-taxable basis

# Third Stimulus Package – American Rescue Plan Act (ARPA)

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- Temporary Premium Tax Credit Enhancements
- ACA's premium credits are significantly enhanced for 2021 and 2022
- The existing income limit of 400% of the federal poverty level, after which individuals will no longer qualify for a premium tax credit, is lifted for 2021 and 2022
  - Individuals at any income level can be PTC-eligible if not offered affordable employer-sponsored coverage or eligible for Medicare/Medicaid
- The applicable percentage of household income that individuals must pay for Marketplace coverage has been reduced at all income levels
  - Special rules also apply to those individuals receiving unemployment compensation during 2021





| <b>2021 PTC Percentages (Pre-ARPA)</b>  |   |   |
|---|---|---|
| <b>In the case of household income (expressed as a % of poverty line) within the following income tier:</b> | <b>The initial premium percentage is—</b> | <b>The final premium percentage is—</b> |
| <b>Up to 133.0%</b>   | 2.07%                                     | 2.07%                                   |
| <b>133% to 150%</b>   | 3.10%                                     | 4.14%                                   |
| <b>150% to 200%</b>   | 4.14%                                     | 6.52%                                   |
| <b>200% to 250%</b>   | 6.52%                                     | 8.33%                                   |
| <b>250% to 300%</b>   | 8.33%                                     | 9.83%                                   |
| <b>300% to 400%</b>   | 9.83%                                     | 9.83%                                   |
| <b>400% and up</b>  | Ineligible for PTC                        |   |

| <b>Temporary PTC Percentages Under ARPA</b>   |   |   |
|---|---|---|
| <b>In the case of household income (expressed as a % of poverty line) within the following income tier:</b> | <b>The initial premium percentage is—</b> | <b>The final premium percentage is—</b> |
| <b>Up to 150.0%</b>   | 0%  | 0%                                      |
| <b>150% to 200%</b>   | 0%  | 2%                                      |
| <b>200% to 250%</b>   | 2%  | 4%                                      |
| <b>250% to 300%</b>   | 4%  | 6%                                      |
| <b>300% to 400%</b>   | 6%  | 8.5%                                    |
| <b>400% and up</b>  | 8.5%                                      | 8.5%                                    |



# COVID-19 Vaccine Considerations

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- **Incentivizing employees to receive the vaccine**
  - Initial focus was on mandating, now the conversation has shifted to incentives
- **Not a lot of direct regulatory guidance**
  - In January, EEOC withdrew proposed ADA & GINA rules on wellness programs
    - Proposed rules would have limited most incentives to *de minimis* amounts so that the program is “voluntary”
  - In February, over 40 major business groups asked EEOC for guidance, and to define what qualifies as a permissible incentive as broadly as possible
  - A relatively small incentive should not make participation “involuntary”

# COVID-19 Vaccine Considerations

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## ■ Approaches to incentivizing employees to receive the vaccine

- Incorporate the vaccine into group health plan’s wellness program, employee assistance program (EAP), or on-site clinic
  - If part of a health-contingent program, the “reasonable alternative standard” applies
- Incorporate the vaccine into workplace wellness program
  - Will be subject to ADA & GINA if it involves a medical exam or disability-related inquiry
  - Pre-screening inquiries by the employer (or a third party engaged by the employer) are generally disability-related inquiries, so participation should be voluntary
  - Structure rewards to be *de minimis* to avoid coercion
  - Grant accommodations to avoid religious or health-based discrimination claims
- Provide PTO to employees to get the vaccine
  - FFCRA leave now includes leave related to receiving, and recovery from, the vaccine





# COVID-19 Vaccine Considerations

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## ■ Group Health Plan Coverage of Vaccines

- All plans subject to the ACA's preventive care mandate must cover the COVID-19 vaccine in network, with no cost-sharing
- During the public health emergency, plans must cover the vaccine at no cost when administered by an out-of-network provider
  - Out-of-network coverage rule is temporary – it applies through the end of the public health emergency, which is expected to last through 2021



## Questions?

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