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EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

DEADLINE FOR NOTICE OF EXPIRATION OF PREMIUM ASSISTANCE IS FAST APPROACHING

As discussed in one of our prior LEGALcurrents (available on our website [here](#)), the American Rescue Plan Act of 2021 (“ARP”) provides a 100% COBRA subsidy for the cost of COBRA continuation coverage for up to six months that took effect on April 1, 2021 and imposes a number of notice requirements on employers/plan administrators. The deadline for employers/plan administrators to provide assistance eligible individuals with the Notice of Expiration of Premium Assistance is fast approaching, and employers/plan administrators should begin to prepare such notice or work with their COBRA administrators to ensure compliance.

Deadline for Providing the Notice of Expiration of Premium Assistance

Employers/plan administrators must provide written notice between 45 days and 15 days before the premium assistance period ends for an assistance eligible individual (not including premium assistance that ends because the individual becomes eligible for other group health plan coverage or Medicare). In other words, the notice is required to be provided to assistance eligible individuals whose premium assistance period ends as a result of the statutory expiration of the COBRA subsidy (i.e., September 30, 2021) or as a result of their maximum COBRA continuation coverage period ending (e.g., at the end of the 18-month period when the qualifying event is termination or a reduction in hours). For assistance eligible individuals whose premium assistance ends as a result of the statutory expiration of the COBRA subsidy, the Notice of Expiration of Premium Assistance is required to be provided between August 16, 2021 and September 15, 2021.

Details to Include in the Notice of Expiration of Premium Assistance

The Notice of Expiration of Premium Assistance must state in “clear and understandable” language that the premium assistance for the assistance eligible individual will “expire soon,” include prominent identification of the date of such expiration, explain that the assistance eligible individual may be eligible for continued COBRA continuation coverage without premium assistance for the remainder of the individual’s maximum COBRA continuation coverage period, and describe other coverage options that may be available.

The Department of Labor issued a model Notice of the Expiration of Premium Assistance (the “Model Notice”) that can be used by employers/plan administrators to satisfy the notice requirements set forth in ARP. The Model Notice is available on the DOL [website](#) and contains additional information, which should be included in the Notice of Expiration of Premium Assistance. For example, the Model Notice includes,

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among other things, the amount COBRA continuation coverage costs per month without the premium assistance, information on the Health Insurance Marketplace, and factors assistance eligible individuals should consider when choosing coverage options.

Next Steps

Employers/plan administrators who handle their own COBRA administration will need to develop a compliant Notice of Expiration of Premium Assistance and send it out within the timeframe detailed above, and employers/plan administrators who outsource their COBRA administration to third parties will need to work with their COBRA administrator to ensure compliance.

If you have any questions regarding the Notice of Expiration of Premium Assistance, please contact any member of the [Employee Benefits and Executive Compensation](#) group at 716.853.1616 or 585.232.6500, or visit www.hselaw.com.

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