

WEBINAR SERIES

Updates on New Stimulus Bill, COBRA Provisions, and Vaccine Guidelines

March 31, 2021



PrestigePEO Webinar

Guest Speakers



WEBINAR HOST

Jason Flinn

Director of HR/Client Services
PrestigePEO



Andy Lubash

Founder & CEO
PrestigePEO



Seth Perretta

Principal
Groom Law Group

Today's Agenda

- APTC Eligibility Changes
- Dependent Care FSA Changes
- COBRA Subsidy Program
- Vaccines & the Workplace

Webinar Forum

All participants are muted.

Please type questions in the side navigation panel and we will try to address most questions during today's session.

Today's presentation will be posted online at prestigepeo.com/blogs/

PrestigePEO Webinar

Today's Presenters



Andy Lubash

Andy Lubash, Founder & CEO

As a founding partner and principal at PrestigePEO, Andrew is fundamental in promoting the PrestigePEO brand, negotiating employee benefit plan renewals, providing guidance on Workers' Compensation and EPLI renewals, and managing the PrestigePEO 401(k) plan.



Jason Flinn

Jason Flinn, Director of HR Client Services

Jason oversees the team of Human Resource Business Partners in their efforts to provide outstanding guidance to PrestigePEO's client companies. Jason is also responsible for providing the strategic backbone that helps manage PrestigePEO's relationship with its client companies, and mentoring clients to maximize workflow efficiencies.



Seth Perretta

Seth Perretta, Principal, Groom Law Group

Seth Perretta is a Principal at Groom Law Group, a Washington, DC law firm that focuses exclusively on employee benefit matters. Seth interfaces regularly with federal agency regulators and advises clients on legislative and regulatory developments.



Overview

- APTC Eligibility Changes
- Dependent Care FSA Changes
- COBRA Subsidy Program

Affordable Care Act Subsidies

- ACA subsidy changes:
- Eliminates upper income limit for 2021 and 2022

“In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 150.0 percent	0.0	0.0
150.0 percent up to 200.0 percent	0.0	2.0
200.0 percent up to 250.0 percent	2.0	4.0
250.0 percent up to 300.0 percent	4.0	6.0
300.0 percent up to 400.0 percent	6.0	8.5
400.0 percent and higher	8.5	8.5”.

- Decreases amounts individuals must contribute toward coverage
- Special provisions for unemployed individuals

Dependent Care FSAs

- Dependent care FSA limit is increased for 2021 from \$5,000 to \$10,500 (from \$2,500 to \$5,250 for married filing single)
- An employer can amend its cafeteria plan retroactively to adopt this increased limit, as long as it amends the plan by the end of the plan year and operates consistently with the amendment



COBRA Subsidies - Overview

- ARPA includes a temporary 100% COBRA subsidy for COBRA qualified beneficiaries where the qualifying event was an involuntary termination of employment or reduction in hours
- Subsidies apply to coverage periods beginning on April 1, 2021 and ending on September 30, 2021
- Subsidy applies to “assistance eligible individuals” (AEIs), which appears to include both employees and dependents who had elected or will elect COBRA
- The AEI doesn’t pay the COBRA premium- the premium is “advanced” by the employer, plan, or insurer and then reimbursed by the government through a refundable tax credit (against Medicare hospital insurance taxes).
 - **In most instances, for an insured group health plan sponsored by a PEO, the PEO will be advancing the subsidized COBRA premiums and then claiming the federal tax credit**
- Individuals who already had an involuntary termination of employment or reduction in hours within the last 18 months and did not timely elect COBRA or dropped COBRA must be given a new COBRA election
- There are two new COBRA notice requirements tied to the ARPA COBRA subsidy program

COBRA Subsidies – Who and What Coverage is Eligible?

- “Assistance Eligible Individual” is COBRA qualified beneficiary (QB) whose qualifying event is termination of employment (except for voluntary terminations) or a reduction of hours
 - Includes such AEIs who do not have a COBRA election in effect on April 1, 2021, and AEIs who previously elected COBRA coverage but are no longer enrolled as of April 1, 2021 because they stopped paying the applicable premium
 - This could effectively require employers to analyze qualifying events dating back to November 2019 (because the 18-month COBRA period would extend past April 2021)
 - Subsidies apply to all plans subject to COBRA (medical, dental, vision, etc.), but not health FSAs



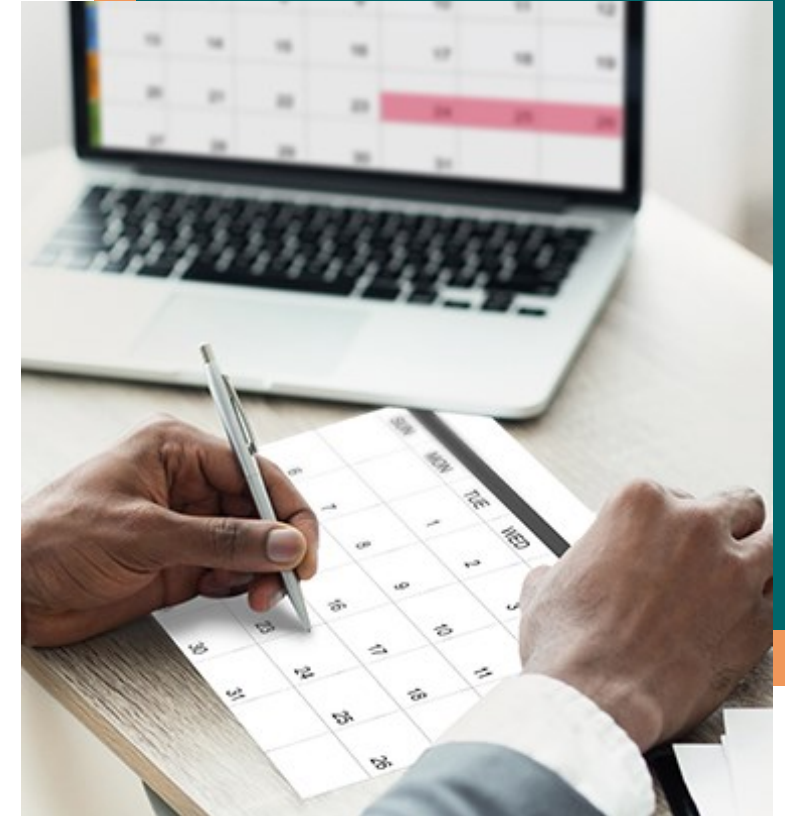
COBRA Subsidies – Who and What Coverage is Eligible?



- No eligibility for COBRA subsidies (or the tax credit) if the qualifying event was the **“voluntary termination of such individual’s employment by the individual”**
- What is a “voluntary termination”?
 - Regulators may look to prior agency COBRA Subsidy guidance (from 2008-2009 economic crisis) for definition of “involuntary,” and who determines
 - This guidance provided IRS would not challenge an employer’s determination that the termination was involuntary as long as the determination was consistent with a reasonable interpretation of the applicable statutory provisions and IRS guidance
 - Employer was also required to maintain supporting documentation of its determination
- PEOs may not currently have information regarding which past terminations/reduction of hours were “voluntary”
- Consider whether possible/appropriate to get attestation from client employer and/or employee regarding whether event was “voluntary”
- What should you do about terminated clients?

COBRA Subsidies – New Election Periods

- If AEI did not previously elect COBRA, or elected COBRA and dropped, will have new 60-day election period starting on the date that he/she receives the new COBRA election notice
- Employer also may permit AEI to change elections to another plan option, as long as same or lower cost
 - This is optional, not required
 - If allowed, must describe option in new COBRA election notice and must allow 90 days to change elections, counted from date notice provided



COBRA Subsidies - Duration

- Subsidies extend through September 30, 2021
 - AEIs may continue on COBRA for longer, but coverage won't be subsidized
- Subsidies end if AEI becomes eligible for Medicare or other GHP coverage
 - Note- actual enrollment not required, just eligibility for other coverage
- Subsidies end if maximum COBRA coverage otherwise ends
 - For example, if AEI makes special election, he/she only qualifies for COBRA for remainder of otherwise applicable COBRA period

COBRA Subsidy – Notice Requirement #1

- Plan must add notice of subsidy to COBRA notices during this period
 - Can add to current notice or in document accompanying current notice
- Plan must provide notice of new election period to those who are eligible for subsidy
 - Must provide by May 31
- Statute lists required content
- DOL required to issue Model Notice by April 10

COBRA Subsidy – Notice Requirement #2

- Also must provide notice of end of premium subsidy between 15-45 days before end of subsidy
- DOL required to provide Model Notice
- This notice requirement does not apply if COBRA ending due to other coverage / maximum coverage period ending



COBRA Subsidy – Tax Credit

- “Person to whom premiums are payable” can apply for tax credit with respect to subsidized premiums that are advanced
 - Who is “person whom premiums are payable”?
 - If multiemployer (collectively bargained union) plan – the **plan**
 - If insured or self-funded group health plan subject to COBRA under ERISA, PHSA, or Code – the employer plan sponsor
 - Other insured group health plans – the **insurer**
- Tax credit is fully refundable FICA tax credit, determined each calendar quarter that full premiums are not paid by AEIs
- Credit can be advanced

COBRA Subsidies – Interaction with COVID-19 Extensions



- DOL/IRS has separately issued one-year extensions on COBRA elections/premium payment/notices
- Unclear whether these extensions apply to new election right under COBRA subsidy or plan's requirement to provide new election notice
- Regardless of extension of original election right, AEIs within their 18-month COBRA coverage period still have new special election right for the prospective subsidized coverage

COBRA Subsidies – Interaction with COVID-19 Extensions

- Example: Jose had a COBRA qualifying event on May 1, 2020. His regular deadline to elect COBRA coverage was June 30, 2020, but that was extended until June 30, 2021. On May 31, 2021, he elects subsidized COBRA coverage retroactive to April 1, 2021.
 - Can the employer/plan require that the May 31, 2021 election include a decision regarding the retroactive period from May 1, 2020 – March 31, 2021? Or is that a separate election that is still extended until June 30, 2021 (assuming the National Emergency continues beyond April 30, 2021)?
 - Once the subsidized COBRA coverage ends on September 30, 2021, does Jose automatically continue on with unsubsidized COBRA for October 2021 (i.e., the last month of the COBRA period)? If Jose makes a payment in October 2021, can the employer/plan credit that to May 2020?
 - Can the employer claim the tax credit in July 2021 (or later) for the April – June 2021 coverage months?

COBRA Subsidies – State Continuation Coverage

- Under some states' continuation coverage provisions (e.g., New York and California), certain qualified beneficiaries covered under insured group health plans have a right to an additional 18 months of coverage once their initial 18-month period under federal COBRA coverage ends
- ARPA may permit individuals to receive the subsidy for state continuation coverage (including for months 19-36 after federal COBRA coverage ends – although may be limited to qualifying event criteria that aligns with federal COBRA extension)
- However, it does not appear that the special election right applies to state continuation coverage
 - In other words, if individual is in extended state continuation coverage period (months 19-36), it appears they do not get special election right under ARPA
 - This is subject to confirmation by the federal agencies
 - Also, states may be permitted to adopt their own special election right- important to monitor state DOI guidance in coming weeks

COBRA Subsidies – Many Open Questions Remain

- Whether “involuntary” applies just to termination or also reduction in hours
- Whether and how an individual can appeal a determination by an employer that an individual is not an AEI
- How the tax credit applies to employer-subsidized post-termination coverage (such as in case of severance)
- Whether an AEI can make an ARPA COBRA election for subsidized coverage but continue to utilize one-year “Outbreak Period” relief for pre-4/1/21 COBRA coverage election and payment
- Whether an employer can require an individual to pay premiums for months he/she was eligible for COBRA prior to April 2021 as a condition to providing eligibility for the subsidized months

Vaccines & the Workplace

Vaccines – The Plan



- Make every adult in the U.S. eligible for vaccination no later than May 1
 - Community Health Centers
 - Pharmacies
 - Community Vaccination Centers
 - Expand the pool of qualified professionals to administer the shot
- Providing tools to make it easier for individuals to find a vaccine
- Providing clear guidance to those who have been vaccinated
- Take New Steps to Reopen the Nation's Schools
- Continue Effort to Combat Variants and Spread of COVID-19

Vaccines & the Workplace - Incentives

Some employers have announced that they will encourage employees to get vaccinated, offering cash, paid time off or extra vacation time to help stop the spread of the coronavirus.

- Cash Incentives
- Additional Contributions to HSA
- Paid Leave
- Vacation Time
- Legal Uncertainties
 - EEOC, Financial Limitations, Tax Consequences

Vaccines & the Workplace – Mandating the Vaccine

- Are there business that are mandating the COVID-19 vaccine with their employees?
- Is it lawful to prohibit employees from coming to work if they refuse to get the COVID-19 vaccine once it becomes available to them?
- Things to consider before requiring employees to be vaccinated
 - Job-related and consistent with business necessity
 - Strong and Detailed Policies
 - Interactive Process and Accommodations
- Proof of Vaccination Requirements
- *Should* we require our employees to get a vaccine?

Sources: Fisher Phillips, LLC

Vaccines & the Workplace – Safety & Privacy

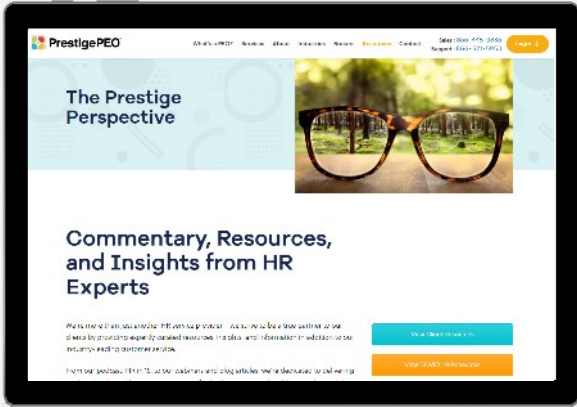
Workplace Safety:

- Social distancing and facemask requirements are recommended to remain even after workers prove that they have been vaccinated for COVID-19
- What are other considerations when it comes to workplace safety and vaccines?

Workplace Privacy:

- Privacy considerations for employees who have or have not been vaccinated
- Confidentiality of employee medical information with regard to a vaccine
- How to treat information provided by employees about their COVID-19 vaccination status

PrestigePEO Communications



Today's presentation will be posted on **PrestigePEO.com** under

- **The Prestige Perspective** prestigepeo.com/blogs
- **COVID-19** prestigepeo.com/covid-19/

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