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KPMG report: Employer's role in Rescue Act COBRA subsidies and tax credits

The economic effects of the coronavirus (COVID-19) pandemic over the past year have presented several workforce challenges including unfortunate situations when individuals who were involuntarily terminated or had their hours reduced must make difficult decisions regarding the costly continuation of employer-sponsored healthcare via COBRA benefits at a time when they are no longer earning income during the pandemic.

The *American Rescue Plan Act of 2021* (Rescue Act) enacted March 11, 2021, contains a particularly helpful provision for such affected individuals, by subsidizing the cost of such continued COBRA benefits—with employers being a significant part of that process. This is reminiscent of the 2009 COBRA subsidies during that economic recovery.

COBRA premium subsidy and employer tax credit

The Rescue Act provides for a 100% COBRA subsidy for up to six months from April 1 through September 30, 2021, for any individual who lost health coverage because of an involuntary termination or involuntary reduction in hours. In addition, the Rescue Act provides these individuals a “second chance” to make their COBRA elections in light of the subsidy, even if they let their coverage lapse.

Employers play a major role in this process because the “subsidy” is technically a tax credit.

- Employers will need to determine which individuals/dependents lost health plan coverage on or after November 1, 2019, due to an involuntary termination of employment or a reduction in hours.
- Employers will need to send a notice (the Department of Labor is supposed to issue model notices within 30 days) to each of the affected individuals (and their covered family members) by May 31, 2021.
- These individuals and family members who lost coverage because of an involuntary termination or reduction in hours after November 1, 2019, but who either did not elect COBRA or let their COBRA lapse, will have until 60 days after receipt of the notice to elect COBRA. Any election for these participants would be prospective only, and not retroactive to the date coverage was lost.

- The subsidy is realized through employers. Employers, plan sponsors, etc., then offset the COBRA costs by claiming a credit against Medicare taxes.
- Employers may permit individuals to enroll in other health plan options offered by the employer within 90 days of the notice (rather than the health plan in which the employee was enrolled prior to the loss of coverage) if that other health plan option is less expensive.
- The subsidy is not subject to an income cap and not taxable to the participants.
- Any participant who is or becomes eligible for other group health coverage or Medicare is not eligible for the subsidy. The individual has the obligation to notify the employer if he or she is not eligible or loses eligibility.

KPMG observation

Employers providing COBRA-related severance need to consider the impact of the subsidy on such arrangements. In light of the subsidy, it may be that participants will elect COBRA coverage—and this can naturally lead to additional claims that may affect insurance or stop-loss insurance renewals. Many employers rely upon a COBRA administrator and will need to coordinate in advance on the required notices and information necessary to claim the payroll tax credit.

Unanswered questions

There are some unanswered or open questions for which guidance is needed, such as:

- How does an employer apply for the credit (specific forms, etc.)?
- How do second qualifying events affect the subsidy?
- Are such subsidies considered parachute payments for purposes of section 280G or section 4960?
- Will this subsidy be extended as it was during the 2009 recovery efforts?

For more information, contact a tax professional with KPMG's Washington National Tax:

Robert Delgado | +1 (858) 750-7133 | rdelgado@kpmg.com

Erinn Madden | +1 (202) 533-3757 | erinmadden@kpmg.com

Terri Stecher | +1 (202) 533-4830 | tstecher@kpmg.com

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