



Insurance Brokers &
Consultants

Employee Benefits Compliance Update

March 11, 2021

PRESENTERS



Liz Mann, J.D.

Liz Mann is EPIC's internal compliance director. Liz and her team are responsible for disseminating information to clients about changing requirements and regulations and reviewing all plan designs and programs for compliance with Federal and State regulations. Liz is embedded into our account management team to provide timely support and guidance as ERISA-related regulations or concerns emerge in the marketplace. As a client, you have the option of directly accessing Liz or accessing her traditionally through your account team. Liz graduated Magna Cum Laude from Saint Mary's College in Notre Dame, IN with Bachelor of Arts degrees in History and French. She graduated with her law degree from University of Toledo, College of Law in Toledo Ohio in 2007. She has accumulated over 12 years of experience working in employee benefits and offers expertise in ERISA, IRS, COBRA, FMLA and ACA compliance.



Bob Radecki, Senior Regulatory and Public Policy Analyst

Bob Radecki has over 30 years of experience in the HR and employee benefits industry helping employers deal with difficult benefit and compliance matters. Previously Mr. Radecki founded, and served as President of A.E. Roberts Company, a nationally recognized compliance consulting and training firm. Bob is recognized as a leading expert on a variety of benefit compliance issues including COBRA, FMLA, ERISA and Health Reform. Bob has been the featured speaker at many industry events and conferences and has published several articles concerning employee benefits compliance issues.



Regan Debban J.D., MBA, Employee Benefits Attorney

Regan Debban has more than 10 years' experience in employee benefits as both an attorney and an advisor. She provides guidance related to regulatory compliance matters to employers and insurance industry professionals. Ms. Debban's work has included helping employers navigate and find practical solutions to complicated Affordable Care Act requirements in addition to assisting with other compliance issues arising under ERISA, COBRA, Section 125, and HIPAA. Ms. Debban has been a featured speaker at events nationwide and has been a principal presenter in compliance webinars attended by thousands of employers and insurance professionals. She is also the author of a leading ACA employer reporting guide. Ms. Debban worked as in-house counsel assisting in HR, benefit, and data security compliance, including for a major Fortune 500 company. Ms. Debban received her law degree from William Mitchell College of Law and her MBA from The University of St. Thomas.

Agenda

- Quick Review of Section 125 Flexibility
- Emergency Outbreak Period Guidance
- American Rescue Plan of 2021 Update
 - DCAP increase
 - Premium tax credit changes
- COBRA Subsidy



SECTION 125 FLEXIBILITY

Consolidated Appropriations Act of 2021

- Expanded carryovers or grace periods
 - Permitted for health FSAs or DCAPs
 - Allowed for plan years ending during 2020 or 2021
 - May offer a carryover of any unused balance OR up to a 12-month grace period (not both)
 - Carryover or grace period does not affect the annual contribution limit

Consolidated Appropriations Act of 2021

- Health FSA post termination reimbursements
 - Following a reduction in hours or termination of employment during calendar year 2020 or 2021, plan may reimburse qualifying medical expenses incurred through the end of the plan year
- DCAP age of qualifying individuals
 - Allows reimbursement for dependents who have not attained age 14 (rather than 13) under the following circumstances:
 - The employee elected to participate in a DCAP plan that had a regular enrollment period on or before January 31, 2020; and
 - Dependent reached age 13 during that plan year, or the next plan year if there are unused expenses that are carried over

Consolidated Appropriations Act of 2021

- Election changes permitted without an event
 - Health FSA and DCAP
 - Employees may begin, end, increase, or decrease elections
 - Health plan
 - Employees may enroll, move from single to family, or revoke election if enrolling in another plan
- Election change restrictions
 - Allowed for plan years ending in 2021
 - Prospective changes only (no refunds)

Consolidated Appropriations Act of 2021

- Flexibility is optional, not required
 - Employers may choose what provisions, if any, to make available
 - Employers may place limits on number of changes, time frames for changes, and which plans may be changed
 - Employers may offer an expanded carryover or grace period with additional restrictions (e.g., cap on carryover, lesser grace period)
- Plan amendments
 - May retroactively implement any provisions so long as the employer informs all eligible employees of changes
 - Amendments must be made by last day of the first calendar year after plan year in which change is effective

American Rescue Plan Act (ARPA)

- Increase in DCAP contribution
 - ARPA increased the amount which may be excluded from taxable income through a DCAP from \$5,000 to \$10,500 (\$5,250 if married and filing separately)
 - Effective 2021 plan years only
 - Unclear whether amounts carried over or available via an expanded grace period from 2020 is included in this maximum amount



OUTBREAK PERIOD GUIDANCE

Public Health Emergency & National Emergency

- Two Different Kinds of Emergencies

Public Health Emergency

Declared by Department of Health and Human Services (HHS) beginning in January 2020 and extended multiple times

Each extension lasts three months – currently in force through April 2021

Impact on Benefit Plans

- Group health plans required to cover COVID-19 diagnostic testing and vaccinations and related services, including out-of-network, through the end of the public health emergency

National Emergency

Declared by President Trump in March 2020

Remains in force until it is announced that it has come to an end

Impact on Benefit Plans

- DOL and IRS Joint Rule requiring suspension of time frames under COBRA, HIPAA and ERISA until the end of the “Outbreak Period”

Outbreak Period = National Emergency + 60 days

Outbreak Period Guidance

- Deadlines are extended until the earlier of
 - (a) 1 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). On the applicable date, the timeframes for individuals and plans with periods that were previously disregarded under the Notices will resume.
- Measure the one year from the date of the requirement, not the date of the event.
 - Example – COBRA election notice normally required within 60 days – now extended one year from that notice requirement date for that individual – not one year from the COBRA event.

Outbreak Period Guidance

- DOL COBRA Examples: Notice 2021-01
 - If a qualified beneficiary would have been required to make a COBRA election by March 1, 2020, the Joint Notice delays that requirement until February 28, 2021, which is the earlier of 1 year from March 1, 2020 or the end of the Outbreak Period (which remains ongoing).
 - If a qualified beneficiary would have been required to make a COBRA election by March 1, 2021, the Joint Notice delays that election requirement until the earlier of 1 year from that date (i.e., March 1, 2022) or 60-days from the end of the Outbreak Period.
 - The COBRA election period would begin at the end of the Outbreak Period

Outbreak Period Guidance

- Other Examples
 - Assume an employee is married on January 15, 2021
 - Under HIPAA special enrollment rules the plan would normally require the employee to notify the employer of the marriage by February 14, 2021 (within 30 days)
 - Employee can now notify the employer within one year of the regular notice date (February 14th, 2022), or 30 days after the end of the Outbreak Period, whichever is earlier.
 - Assume a COBRA qualified beneficiary (QB) enrolls in COBRA coverage but fails to make the COBRA payment for January 2021 coverage by normal grace period of January 31, 2021.
 - QB can now make that payment within one year of the normal January 31, 2022 or within 30 days of the Outbreak Period, whichever is sooner.



COBRA SUBSIDY

COBRA Subsidy

- American Rescue Plan Act (ARPA) Contains Federal Government Subsidy of 100% of COBRA Premiums for Certain Qualified Beneficiaries (QB)
- The Basics
 - Subsidy runs from April 1st through September 30th, 2021
 - Subsidy only for continuation of coverage due to involuntary termination or reduction in hours
 - QBs pay \$0.00, Employer pays full premium to carrier or covers QBs at no cost to participant on self-insured plan
 - Employer recovers lost premium through a payroll tax credit
 - Previously eligible individuals not currently covered have a second chance to enroll
 - Significant new notice requirements

COBRA Subsidy

- Subsidy Election Coverage Details
 - Full cost of COBRA (single or family) covered 100%
 - Subsidy expires September 30th or when QB becomes eligible for other group health plan coverage or Medicare.
 - QB is required to notify employer when eligible for other coverage.
 - Subject to a \$250 penalty for failure to notify.
 - Subsidy covers all group health plan coverage (medical, dental, vision) except Health FSA coverage under COBRA.
 - Subsidy covers state continuation coverage similar to COBRA but only for involuntary termination and reduction in hours.

Eligible for Other Coverage

Unlike current COBRA rules – individuals are ineligible for subsidy when they are ELIGIBLE for other group health coverage or Medicare.

How will employers manage this?

COBRA Subsidy

- Subsidy Election Coverage Details (cont.)
 - “Second Bite at the Apple”
 - Individuals who experienced an eligible qualifying event, but who did not elect, or elected and subsequently dropped coverage must be given a second chance to enroll To take advantage of the subsidy.
 - The individual must still be within their maximum coverage (e.g. 18 months).
 - In this case coverage would only be provided from the second election date forward (i.e. April 1st), not retroactively to the original COBRA event date.
 - In no case is an individual eligible for more than their original maximum coverage allowed for the applicable event (i.e. 18 months of COBRA), measured from the original event date.

COBRA Subsidy

- Employer Payroll Tax Credit
 - Employers will recover premiums not paid by COBRA QBs through a payroll tax credit
 - Similar to how employers recover paid leave costs from the FFCRA
 - If tax credit exceeds amount of payroll taxes due for a particular period, the employer can apply for a refundable tax credit
 - In most cases the employer will have more payroll taxes due than the amount of credit they can claim for lost COBRA premiums.

COBRA Subsidy

- Notice Requirements
 - COBRA Election notices will need to be updated with new language describing the subsidy
 - Special “Second Bit at the Apple” Notice
 - Special notice must be sent to any eligible individual still within their maximum continuation period, who has either not elected coverage , or who previously elected coverage and dropped COBRA.
 - This special notice must contain everything the individual needs to make a second election.
 - Subsidy ending notice
 - A notice must be sent to anyone receiving the subsidy informing them of the subsidy coming to an end.
 - Notice must be sent between 15 - 45 days prior to end of subsidy.
 - DOL instructed to issue model notices


COBRA Subsidy

- Questions and Open Issues
 - How difficult will it be to identify voluntary vs involuntary terminations>
 - Can QB drop COBRA and re-enroll in individual coverage after subsidy expires?
 - Current healthcare.gov special enrollment rules allow enrollment when an individual loses an employer provided COBRA subsidy – likely the same will apply to this situation.
 - How many people will temporarily drop individual health insurance plans to enroll in the free COBRA coverage?
 - What will the impact be in employer plan claims payments?



QUESTIONS?

THANK YOU FOR ATTENDING!



EPIC is an insurance brokerage and benefits consulting firm and does not provide tax or legal advice to clients. Therefore it is important to consult legal counsel regarding this information to determine how it affects your company and what the company needs to do to comply.