

**CLIENT ALERT  
FOR COMPANIES & EMPLOYERS**

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**COVID-19**

**Immediate Action Item:**

**New COBRA Subsidies and Notice Requirements**

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The purpose of this Alert is to provide California employers with an overview of the new COBRA/Cal-COBRA subsidy obligations under the American Rescue Plan Act of 2021 (the “ARPA”).

It is our hope that these Alerts will serve as a helpful resource as our corporate clients in the US and Headquarters in Japan make important strategic decisions during these fast-changing and challenging times. The team at Yorozu Law Group is ready to assist in creating and implementing strategies to manage business and employment risks. Please contact us if we can be of any assistance. It would be our privilege to serve you.

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On March 11, 2021 President Biden signed the American Rescue Plan Act of 2021 (“ARPA”) into law. ARPA is the latest relief bill enacted to mitigate the economic impact of the COVID-19 pandemic. In addition to extending benefits provided under prior relief bills, including the Paycheck Protection Program, the employee retention tax credit, and paid sick and family leave tax credits, ARPA introduced a new benefit to subsidize health insurance premiums under COBRA and any state-level equivalent program (such as Cal-COBRA). This Alert addresses COBRA, but please be aware of state-level mini-COBRA considerations that may be appropriate to discuss with your plan administrator and/or legal counsel.

ARPA provides a federal subsidy to fully cover up to six months of the COBRA (or Cal-COBRA) group health insurance premium payments for former/current employees referred to as assistance eligible individuals (“AEIs”). California employers that sponsor a group health insurance plan and who already have or will lay off (or reduce the working hours of) any employees are required to send COBRA subsidy notices and make COBRA premium payments. Please see below for details of the COBRA subsidy provisions and the immediate actions that employers should take before May 31, 2021.

### **1. Effective Date of ARPA COBRA Subsidies; Applicability to Employers**

The ARPA COBRA subsidy is effective from April 1, 2021 through September 30, 2021 (“COBRA Subsidy Term”), and applies to employers that sponsor group health insurance plans subject to federal COBRA (employers with 20 or more employees) or to a state-level equivalent (including Cal-COBRA for employers with 2-19 employees).

### **2. Assistance Eligible Individuals**

An AEI is an individual who (a) is eligible for COBRA continuation coverage during the COBRA Subsidy Term, and (b) elects such coverage. Individuals will not be eligible for the COBRA subsidy if they voluntarily resigned or were terminated for gross misconduct. In general, an AEI is eligible for COBRA in the event of involuntary termination or the reduction of hours (which may have already occurred before or will occur during the COBRA Subsidy Term). During the COBRA Subsidy Term, AEIs will become ineligible for the COBRA subsidy in the event that their COBRA eligibility expires or they become eligible for any other group health insurance plan or Medicare.

### **3. Required Notices**

Employers (or their plan administrators) are required to provide ARPA COBRA subsidy notices to all AEIs. As with other COBRA violations, employers who fail to provide COBRA subsidy notices will be subject to monetary penalties. The Department of Labor has issued [model notices](#) for employers’ use. The required ARPA subsidy notices include:

- General Election Notice for COBRA: This notice must be sent to all AEIs who have or will become eligible for COBRA between April 1, 2021 and September 30, 2021.
- Special Election Notice for COBRA: This notice must be sent to all AEIs who became eligible for COBRA between November 1, 2019 (or in certain cases, earlier) and April 1, 2021, regardless of whether they previously elected or currently have COBRA coverage.
  - The deadline for this notice is **May 31, 2021**.
- Expiration of Subsidy Notice: This notice must be sent between 15 and 45 days before an AEI’s premium assistance will expire.

### **4. Payroll Tax Credits**

Employers who make payments for AEI COBRA subsidies required under ARPA will receive tax credits to offset their quarterly payroll taxes. If the COBRA subsidies exceed an employer’s payroll taxes, the difference will be refundable. IRS guidance on claiming payroll tax credits is forthcoming.

### **5. Employer Action Items**

To comply with the new ARPA COBRA subsidy requirements, California employers should:

- Consult with their health plan administrators to identify all previously terminated AEIs and send each AEI a required notice by May 31, 2021.

- Coordinate with their human resources, payroll, and accounting departments to make the COBRA premium payments for AEIs and claim the appropriate tax credits.
- Consult with legal counsel to determine if the ARPA COBRA subsidy affects any previously signed employee severance agreements.

**If you have questions or would like additional information, please contact Yorozu Law Group at:**

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