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New Dependent Care FSA, COBRA Coverage and Medical Expense Relief for 2021

(ARPA and IRS Announcement 2021-7)

April 1, 2021

President Biden signed the American Rescue Plan Act of 2021 ("ARPA") into law on March 11, 2021. This client advisory summarizes relief under ARPA with respect to employer dependent care flexible spending account (FSA) plans and COBRA coverage. We have also included a brief note on recent IRS guidance regarding the treatment of amounts paid for COVID-19 personal protective equipment (PPE).

2021 Dependent Care FSA Limit Increased

For the 2021 taxable year, ARPA increases the maximum dependent care FSA limit from \$5,000 to \$10,500 (for single filers and married filing jointly) and from \$2,500 to \$5,250 (for married filing single). Employers have the discretion as to whether to implement these increased limits for 2021. These increased limits provided for under ARPA do not extend to years beyond the 2021 taxable year.

An amendment to incorporate the increased limit into a dependent care FSA plans must be adopted by no later than December 31, 2021, for calendar year programs, or the last day of the plan year for which the amendment is effective, for non-calendar year plans.

COBRA Premium Assistance

ARPA also provides relief under COBRA to Assistance Eligible Individuals in the form of temporary premium subsidies. An "Assistance Eligible Individual" is a COBRA qualifying individual who is eligible for continuation coverage at any time between April 1 and September 30, 2021 as a result of a qualifying event **other than** that individual's **voluntary** termination of employment, and includes individuals who previously declined or dropped COBRA continuation coverage, provided that the individual is not eligible for Medicare or other group health plan coverage.

Employer-sponsored medical plans are required to offer premium-free COBRA coverage for Assistance Eligible Individuals commencing April 1, 2021, and ending September 30, 2021 (the "Assistance Time Period"). This means that 100% of COBRA premiums (including the 2% administrative fee) for Assistance Eligible Individuals with COBRA coverage during the Assistance Time Period must be covered by the former employer. The former employer may then take a credit against their Medicare payroll taxes to cover the cost of the premium assistance.

Employers must provide notice of the premium assistance to Assistance Eligible Individuals who become eligible for COBRA during the Assistance Time Period. Notice must also be given, no later than May 31, 2021, to Assistance Eligible Individuals who had a qualifying event prior to the Premium Assistance Period, and who either declined or discontinued coverage, informing them that they now have a second opportunity to elect COBRA and obtain the premium assistance. This new election opportunity starts April 1, 2021 and ends 60 days after the required notice is delivered.

A notice of expiration must also be provided at the end of the Assistance Time Period to any affected individuals. The notice must be provided no more than 45 days (and no less than 14 days) before the subsidy expires. Model notices will be available from the DOL in early April.

Similar rules apply to plans subject to state mini-COBRA, but the payment of the premiums will be the responsibility of the carrier.

Please Note: ARPA does not extend the maximum COBRA coverage period. For example, if an individual's maximum COBRA coverage period ends on June 30, 2021, the individual would only be eligible for COBRA, and the premium assistance, through June 30, 2021.

Cost of COVID-19 PPE Now Considered Qualified Medical Expense

Under IRS Announcement 2021-7, the IRS recently provided that amounts paid for PPE, such as masks, hand sanitizer, and sanitizing wipes, that is used for the primary purpose of preventing the spread of COVID-19 are treated as amounts paid for medical care under § 213(d) of the Internal Revenue Code. Accordingly, such amounts incurred on or after January 1, 2020 may be eligible to be paid or reimbursed under health FSAs, HRAs, and HSAs. Plan Sponsors should review their plans to determine if any amendments are required to reflect this change.

If you have questions or would like additional information, please contact a member of our Employee Benefits and Executive Compensation Practice Group.



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