Alert

March 12, 2021

Employee Benefits and Executive Compensation Provisions in the American Rescue Plan Act

President Biden has signed into law the American Rescue Plan Act of 2021. The act contains a number of provisions affecting employee benefit plans. A description of some of these changes follows:

Federally Funded COBRA Subsidy

Beginning April 1, 2021, and ending on September 30, 2021, certain individuals who are eligible for and elect continuation of medical coverage under the Consolidated Omnibus Budget and Reconciliation Act of 1985, as amended (COBRA) or similar state and local laws are eligible to receive COBRA continuation coverage funded by the federal government and without any cost to the individual. Employees who lose coverage due to an involuntary termination of employment or due to a reduction in hours and their eligible dependents are eligible for the subsidy. No subsidy is available for employees who voluntarily terminate employment. Employers and health insurers cannot collect COBRA premiums from former plan participants eligible for the subsidy during this period. Insurers of fully insured plans will be reimbursed through a tax credit and employers of self-insured plans will receive reimbursement through a payroll tax credit.

This COBRA subsidy, combined with the extension of the deadline to elect COBRA continuation coverage presents an administrative challenge for employers. Ordinarily, employees who lose medical coverage through an employer group health plan have 60 days to elect COBRA continuation coverage and 45 days after electing coverage to make their first payments of COBRA premiums. The COBRA election and payment deadlines have been suspended beginning on March 1, 2020, and ending on the earlier of one year from the date the relevant COBRA time period began and the 60th day following the end of the presidentially declared national emergency period for COVID-19. The end of the national emergency period has not yet been announced.

In addition, the act provides that any terminated employees who are eligible for a COBRA subsidy and who did not elect COBRA continuation coverage (or who cancelled COBRA continuation coverage) may enroll in COBRA continuation coverage beginning on April 1, 2021, and ending 60 days after an updated COBRA notice is sent to those terminated employees. This includes individuals who were previously eligible for COBRA continuation coverage but who did not elect COBRA, and, if they had elected COBRA, their coverage would have extended into the subsidy period. Employees who lost health coverage as far back as November 2019 may benefit from the subsidy, since their 18-month maximum COBRA period will not expire until the end of April 2021.

Importantly, the act requires that the Department of Labor issue a model COBRA notice that can be sent to all individuals who qualify for this COBRA coverage within 30 days of the act's passage. Employers are also obligated to send a follow-up notice out to participants whose subsidy will terminate prior to September 20, 2021, to warn them about the expiration of the subsidy and the Department of Labor is required to issue a model notice within 45 days of the act's passage. While this coverage will be paid by the federal government through a tax credit, it will likely require employers to carefully keep records of who receives COBRA coverage so that they can correctly complete their tax filings to receive the credit. In addition, the notice requirements will carry a large administrative burden and potential penalties if the notices are not timely sent.

COBRA Plan Enrollment Option

Ordinarily, individuals who are eligible to elect COBRA continuation coverage can only elect to continue the same type of coverage that was in effect at the time they became eligible to elect COBRA continuation coverage. The act permits, but does not require, employers to allow

Matthew D. Clyde

Member

mclyde@cozen.com
Phone: (412) 620-6517
Fax: (412) 275-2390

Lynn Krisay Brehm

Member

lbrehm@cozen.com
Phone: (704) 348-3460
Fax: (704) 334-3351

Related Practice Areas

- Employee Benefits & Executive Compensation
- Labor & Employment

individuals to elect COBRA continuation for other health plan options offered by the employer that have lower premiums than the coverage in effect when the participant became eligible for COBRA. For employers that will permit these changes, individuals will have 90 days from the date they receive their COBRA notice to make a new election.

Increase in 2021 Dependent Care Flexible Spending Account Limits

The act raises the limit on maximum contributions to a dependent care flexible spending account from $5,000 to $10,500 (and from $2,500 to $5,250 for married individuals filing separately). This change applies to calendar year 2021 only and, if no further congressional action is taken, the limit will revert to $5,000 (and $2,500) in 2022. Because a provision of the Consolidated Appropriations Act of 2021 that was signed into law in late December 2020 allows (but does not require) employers to allow mid-year changes to flexible spending accounts without a qualifying event, employers can (but are not required to) allow employees to change their contributions. Employers can allow their employees to increase their dependent care flexible spending account contributions without incurring any costs other than the administrative costs needed to allow employees to make changes.

Single Employer Pension Plan Funding Relief

The act provides single employer defined benefit pension plans with the ability to amortize pension plan underfunding over a 15-year period rather than over a seven-year period and permits the usage of higher interest rate assumptions for purposes of determining the plan's funded percentage. The act permits these changes to be retroactively applied for 2019 and 2020. Employers with underfunded pension plans should work closely with their actuaries and legal counsel to decide whether to incorporate these changes.

Multiemployer Pension Plan Funding Relief

The act provides direct funding to severely underfunded, defined benefit pension plans that are jointly sponsored by employers and labor unions (referred to as multiemployer plans). In general, financial assistance under the act is only available for multiemployer plans that are in critical and declining status, have become insolvent, or have suspended or reduced benefits. The amount of financial assistance available for multiemployer plans will be determined based on the amount necessary to pay accrued pension benefits that are payable through the last day of the plan's 2051 plan year (based on the plan's actuarial assumptions). Multiemployer plans have until December 31, 2025, to apply for the special assistance, and if a plan is granted financial assistance, there is no obligation for the multiemployer to repay the financial assistance. In some cases, multiemployer plans will be required to reinstate and pay benefits that were previously reduced due to lack of funding. It is not clear whether employers who previously withdrew from a multiemployer pension plan or are in the process of withdrawing from a multiemployer pension plan will receive credit for this funding or see any reduction in their withdrawal liability. We are expecting further guidance from the Pension Benefit Guaranty Corporation on this issue.