

FOR YOUR BENEFIT NEWSLETTER, MARCH 2021

THE AMERICAN RESCUE PLAN ACT OF 2021

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARPA) into law. The ARPA includes provisions which immediately impact employer-sponsored plans, including the addition of premium assistance for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (COBRA) for the period April 1, 2021, through Sep. 30, 2021, and a significant increase in the maximum benefit available under a dependent care assistance plan.

COBRA Premium Subsidy

The ARPA includes a 100% premium subsidy for COBRA qualified beneficiaries, including both employees and dependents, if the qualifying event related to the COBRA coverage was an involuntary termination of employment or a reduction in hours of employment which caused the loss of coverage. Other COBRA qualifying events, including voluntary termination of employment or divorce, do not entitle the employee or dependents to the premium subsidy. The subsidy is available for COBRA coverage in effect April 1, 2021, through Sept. 30, 2021 (or the last day of the maximum period of continuation coverage, if prior to Sept. 30). A qualified beneficiary loses eligibility for the subsidy as of the date he or she becomes eligible for other comprehensive group health plan coverage, including Medicare.

If an employee was eligible to elect COBRA coverage prior to April 1 or otherwise dropped COBRA coverage prior to April 1, but such individual's COBRA coverage would be in effect as of April 1 but for the failure to elect or decision to drop coverage, the individual may elect to participate in the COBRA coverage as of April 1 and receive the subsidy. Employers must provide a supplemental notice to qualified beneficiaries eligible for the subsidy no later than May 30, 2021, and the Department of Labor (DOL) has been directed to develop the notice.

An employer will receive a 100% payroll tax credit for the amount of the subsidy provided. The credit may offset payroll taxes otherwise required to be transmitted to the Internal Revenue Service (IRS). If the tax credits exceed payroll tax withholdings, a refund may be requested on the employer's quarterly payroll tax filing on Form 941.

We will continue to provide updates as the DOL and IRS provide required notices, forms and additional guidance. Employers should immediately start to

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identify former employees and dependents who should receive the supplemental notice regarding the subsidy.

Dependent Care Assistance Increase

For 2021 only, the maximum benefit provided under a dependent care assistance flexible spending account (FSA) increased from \$5,000 to \$10,500 for married persons and \$2,500 to \$5,250 for single persons. An employer does not have to permit this increased benefit for 2021. If an employer decides to implement the new limits, a plan amendment incorporating the provision must be adopted no later than Dec. 31, 2021.

PAID LEAVE TAX CREDITS UNDER THE AMERICAN RESCUE PLAN ACT

As noted above, President Biden signed the American Rescue Plan Act of 2021 (ARPA) into law last week. Amongst the law's many changes, ARPA will extend employer tax credit opportunities for certain forms of COVID-19-related paid leave. Although the federal law requirement for employers with fewer than 500 employees to provide paid leave under the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Act (EFMLA) expired on Dec. 31, 2020, tax credits covering the cost of EPSLA and EFMLA for those employers that have continued to provide such benefits were extended through March 31, 2021. ARPA will extend those tax credits from April 1, 2021, through Sept. 30, 2021, and expand the reasons for which eligible employees can take tax credit-funded EPSLA and EFMLA leaves.

COVID-19 RELIEF FOR FLEXIBLE SPENDING ARRANGEMENTS AND DEPENDENT CARE ASSISTANCE PLANS

The Consolidated Appropriations Act, 2021 (CAA), passed in December 2020, provides COVID-19 relief for health flexible spending arrangements (FSAs) and dependent care assistance programs (DCAPs).

The Internal Revenue Service has recently issued guidance interpreting the CAA changes, which:

- provide greater flexibility with respect to carryover of unused amounts from FSAs and DCAPs for 2020 and 2021 plan years;
- extend the permissible period for incurring claims for plan years ending in 2020 and 2021;
- provide a special rule regarding post-termination reimbursements from FSAs during 2020 and 2021 plan years;
- allow midyear election changes for FSAs and DCAPs. Employer health plans may now permit employees eligible to make salary reduction contributions with the following options with respect to salary reduction elections for the plan year ending in 2021 only:



- make a new prospective salary reduction election if the employee initially declined employer health coverage;
- revoke an existing salary reduction election and elect different health coverage on a prospective basis; or
- prospectively revoke an existing salary reduction election provided the employee confirms in writing that the employee is enrolled or will enroll in other health coverage not sponsored by the employee's current employer.

As explained in greater detail in the American Rescue Plan Act of 2021 (ARPA) article in this newsletter, ARPA increased the DCAP limit for 2021 to \$10,500 for married persons and \$5,250 for single persons.

Employers are not required to adopt any of these changes made by the CAA. Nonetheless, an employer may want to do so to provide greater flexibility to employees participating in FSAs and DCAPs who have been impacted by COVID-19. Deadlines for adopting amendments to applicable plan documents will expire either Dec. 31, 2021, or Dec. 31, 2022, depending upon the specific changes being made as part of the amendment.

Please contact your regular AT attorney or those listed on this newsletter if you would like to learn more about these developments.

ERISA COMPENSATION DISCLOSURE REQUIREMENTS EXTENDED TO GROUP HEALTH PLANS

The recently enacted Consolidated Appropriations Act, 2021 (CAA), imposes new compensation disclosure regulations for health and welfare plans. Under the CAA, "covered service providers" must disclose any "direct" and "indirect" compensation in excess of \$1,000 to a "responsible plan fiduciary" of the covered health plan. These compensation disclosure rules apply to any contract executed on or after Dec. 27, 2021.

Previously, under ERISA's prohibited transactions rules, at Section 408(b)(2), only qualified retirement plans were required to disclose compensation arrangements; group health and welfare plans were carved-out as exempted. The CAA amends ERISA Section 408(b)(2) to broaden the definition of "covered plan" to include "covered health plans," and it requires the disclosure of direct and indirect compensation paid by "covered service providers" to such plans. Specifically, the change imposes a reporting requirement on any covered service provider that receives or expects to receive \$1,000 or more in direct or indirect compensation. Once these new rules take effect, no contract or arrangement for health brokerage or consulting services will be deemed reasonable unless the disclosures are made to a "responsible plan fiduciary" of the covered health plan. The "responsible plan fiduciary" is defined as a plan fiduciary with authority to cause a plan to enter into, extend or renew a



contract or arrangement for plan services.

Under the CAA, covered service providers include service providers who provide brokerage services or consulting services. “Brokerage Services” include services for which the covered service provider, an affiliate or a subcontractor reasonably expects to receive indirect compensation or direct compensation for the services provided to the ERISA-regulated group health plan.

“Consulting” is also broadly defined to include the services for which the covered service provider, an affiliate or a subcontractor reasonably expects (or should reasonably expect) to receive compensation—whether direct or indirect—related to the development or implementation of plan design, insurance or insurance product selection (including vision and dental), recordkeeping, medical management, benefits administration selection (including vision and dental), stop-loss insurance, pharmacy benefit management, transparency tools, group purchasing organization agreements and services, participation in and services from preferred vendor panels, disease management, compliance services, employee assistance programs, or third-party administration services. Key to both brokerage and consulting services is the incredibly broad definition of indirect compensation, which now extends to most all relationships with group health plan contractors and subcontractors.

Armstrong Teasdale’s Employee Benefits attorneys would be happy to provide additional guidance in navigating these changes and help keep you and your service providers clear of violations of ERISA’s prohibited transactions rules and reforms.