

Have you modified your severance agreement recently? You should

Are you planning to lay off employees and use your same template severance agreement which hasn't been modified in the last year? Better think again, particularly if you plan to terminate an employee's health coverage.

The American Rescue Plan Act of 2021, signed into law on March 11, 2021, made significant changes to how COBRA is administered. It provides for additional COBRA enrollment rights and a temporary 100% COBRA premium subsidy from April 1, 2021, to Sept. 30, 2021. These provisions apply to "assistance eligible individuals," who are generally former employees who lost group coverage due to an involuntary termination of employment or a forced reduction in hours.

The ARPA imposes changes that may impact severance packages offered by employers through September 2021. Importantly, employers who pay for a terminated employee's COBRA premiums as part of the severance agreement should know that in most cases, this will no longer be a benefit that can serve as adequate consideration for a release of claims.

Employees who are involuntarily termi-



nated between April 1, 2021 and Sept. 30, 2021, unrelated to gross misconduct, will be eligible for the subsidized COBRA premiums independent of any severance agreement or release unless they are eligible for other group insurance coverage.

Employer-paid COBRA benefits may remain valuable as consideration in severance packages for employees who voluntarily resign (because employees who voluntarily resign are not eligible for the subsidy), or for employees who are involuntarily terminated if the employer chooses to provide paid COBRA continuation coverage beyond Sept. 30, 2021.

Some severance agreement templates use language explaining that benefit coverage will end on a certain date and that continuation of coverage may be elected but will be at the employee's expense. This is no longer true for eligible individuals under the ARPA. Such language should be revised

to reflect that eligible employees under the ARPA can sign up for COBRA coverage and will pay no premiums from April 1, 2021 through Sept. 30, 2021.

Employers should audit recent severance offers and prospectively implement the above changes so they don't find themselves subject to a Department of Labor investigation or excise taxes under the Internal Revenue Code.

The Department of Labor has a robust website outlining the ARPA and offers updated forms for employers to use explaining these benefits to employees at www.dol.gov. Be sure to consult with your employment attorney before offering another severance agreement this summer and beyond to remain current and lawful in your human resources practices.

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