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A slide with a dark grey background and a gold diagonal bar at the bottom left. The Miller Johnson logo is in the top left. The main title "IRS Guidance Answers 86 of Your Questions About COBRA Subsidies" is in large, bold, yellow text. Below it, two names are listed with a yellow double arrow icon: "Tripp VanderWal" and "Brett Liefbroer". The Miller Johnson logo is also in the bottom left corner of this slide.



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Substantiation of AEI Status

- Employers are permitted to require COBRA qualified beneficiaries to self-certify that they are eligible for the COBRA subsidy (i.e., an AEI)
 - The IRS recommends this approach to substantiate eligibility for the Medicare tax credit
 - This will be helpful with respect to COBRA qualified beneficiaries who received an Extended Election Opportunity Notice
 - The DOL has a model form for this purpose
- Employers are also permitted to require potential AEIs to self-certify their eligibility for another GHP or Medicare

Other Disqualifying Coverage

- An individual is generally ineligible for a COBRA subsidy if the individual is eligible for another GHP or Medicare
 - An individual is eligible for the COBRA subsidy if the individual was eligible for another GHP before April 1, 2021 but on or after April 1, 2021 is not permitted to enroll in the GHP
 - Ex. An employee has an involuntary termination of employment as of October 1, 2020 and is permitted to enroll in another GHP under an annual open enrollment period as of January 1, 2021. If the individual declines enrollment and is not eligible to enroll until January 1, 2022, the individual is eligible for the COBRA subsidy
 - Keep in mind that HIPAA special enrollment deadlines were extended and may be relevant to the analysis

PTC Interaction

- A *former* employee who is *enrolled* in COBRA is not eligible for a PTC when purchasing coverage on an ACA exchange
- A *current* employee who is *eligible* for COBRA with the subsidy is not eligible for a PTC when purchasing coverage on an ACA exchange (i.e., it is affordable coverage)
- An individual who elects COBRA with a subsidy under the Extended Election Opportunity may elect COBRA as of April 1, 2021 or prospectively.
 - This allows the individual to avoid an overlap of COBRA and coverage through the exchange and will preserve the individual's PTC

COBRA Subsidy During COBRA Extensions

- As long as a COBRA qualified beneficiary becomes eligible for COBRA due to a reduction in hours or involuntary termination of employment, the COBRA subsidy is available during the following extended periods to the extent that they overlap April 1, 2021 – September 30, 2021:
 - An 11-month disability extension
 - The extended period (up to 36 months) for a second qualifying event
- Ex. A COBRA qualified beneficiary becomes eligible for COBRA due a reduction in hours and the 18-month period ends March 1, 2021, but the QB's dependent child "ages out" on January 15, 2021; *the child is eligible for the subsidy*

Involuntary Terminations of Employment

"An involuntary termination of employment means a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee's implicit or explicit request, *where the employee was willing and able to continue performing services*"

Terminations During Illness or Disability Leaves

- An involuntary termination of employment occurs when the employer takes action to terminate the individual's employment while the individual is absent from work due to illness or disability, *if before the action there is a reasonable expectation that the employee will return to work after the illness or disability subsides*
- A mere absence from work is *not* an involuntary termination of employment, but may be a *reduction in hours* if the absence causes a loss of coverage

Terminations In Connection With Retirements

- An involuntary termination of employment generally does not include retirements, unless absent the retirement the employer would have terminated the employee's employment, the employee was willing and able to continue employment, and the employee knew the employer would terminate the employee's employment absent the retirement
- An involuntary termination of employment *includes* participation in a "window program" in which employees with impending terminations of employment are offered a severance arrangement to terminate employment within a specified period of time

Terminations For Personal Reasons

- Involuntary terminations generally do *not* include:
 - An employee's termination due to *general* concerns about workplace safety
 - Departures due to personal circumstances, such as
 - School/daycare closings (but may be a reduction in hours if *both* the employer and employee intend to maintain the employment relationship)
 - Health concerns of the employee or a family member
 - Inability to find daycare
 - An employee may be able to prove an involuntary termination of employment if the employee can show that the employer's failure to take an action or provide a reasonable accommodation rises to the level of a constructive discharge

Involuntary Reductions in Hours

Involuntary reductions in hours that do *not* cause a loss of coverage may still be an involuntary termination of employment if the material reduction in hours is treated as a termination for "good reason" (i.e., an employer action that results in a material negative change in the employment relationship for the employee that is analogous to a constructive discharge)

All Benefits That Are Subject To COBRA Are Eligible For The COBRA Subsidy

- Group medical coverage
- Group prescription drug coverage
- Group dental-only coverage
- Group vision-only coverage
- Health Reimbursement Arrangements (including Individual Coverage HRAs)
- Employee Assistance Programs that provide medical care (e.g., counseling sessions)
- *Not* medical flexible spending accounts

Switching Coverage Options

- If an employer allows a COBRA qualified beneficiary who is an AEI to switch to a different coverage option than the COBRA qualified beneficiary was enrolled as of the COBRA qualifying event (outside of the annual open enrollment period), it must be cheaper coverage
 - This is allowed, but not required, under ARPA
 - If the COBRA qualified beneficiary elects a higher cost option, the COBRA subsidy is *not* available *at all* (i.e., the COBRA qualified beneficiary can't elect to pay the difference in the coverage options)

COBRA Elections Under ARPA

- The COBRA election deadline extensions under EBSA Disaster Relief Notices 2020-01 and 2021-01 don't apply to the COBRA election deadlines under ARPA
 - An AEI who has an extended election opportunity must make his or her election within 60 days of receiving the extended election opportunity notice
 - An AEI who has a qualifying event that is a reduction in hours or involuntary termination of employment between April 1, 2021 and September 30, 2021 must elect COBRA and request to be treated as an AEI within 60 days of receiving the COBRA election
 - EBSA Disaster Relief Notices may extend the ability to elect COBRA, but not the eligibility for the COBRA subsidy

End of COBRA Subsidy on September 30, 2021

- Once the subsidy period ends on September 30, 2021 (unless extended by further legislation), COBRA coverage will automatically continue for a COBRA qualified beneficiary who was an AEI
 - For COBRA coverage past September 30, 2021, the COBRA qualified beneficiary must timely pay the COBRA premium
 - Keep in mind the payment deadlines were extended by the EBSA disaster relief notices

Extended Election Opportunity under ARPA

- If a COBRA qualified beneficiary incurs an involuntary termination of employment within 18 months before April 1, 2021, but has not elected COBRA as of April 1, 2021, the COBRA qualified beneficiary may:
 - Elect COBRA under the original COBRA election period (as extended by the Disaster Relief Notices) with no gap in coverage
 - Decline to elect COBRA under the original COBRA election period and instead elect COBRA as of April 1, 2021 or another prospective date
 - A COBRA qualified beneficiary who declines COBRA back to the original qualifying event may not change that election after the 60-day election period under ARPA

Amount of Medicare Tax Credit

- Generally, the amount eligible for the Medicare tax credit is the amount of the COBRA premium that is “not paid” by the AEI
 - Includes the admin fee (2% in most cases, but up to 50% during the 11-month disability extension)
 - If the employer voluntarily subsidizes COBRA (e.g., under a severance agreement), the amount of the voluntary subsidy is not eligible for the Medicare tax credit

Failure of AEI to Provide Notice of Disqualifying Coverage

- If an AEI fails to provide notice of disqualifying coverage (another group health plan or Medicare):
 - The AEI may be subject to a penalty on his or her federal income tax return. The employer does not need to collect the penalty (unless the failure was due to reasonable cause)
 - The employer remains eligible for the Medicare tax credit

Questions?

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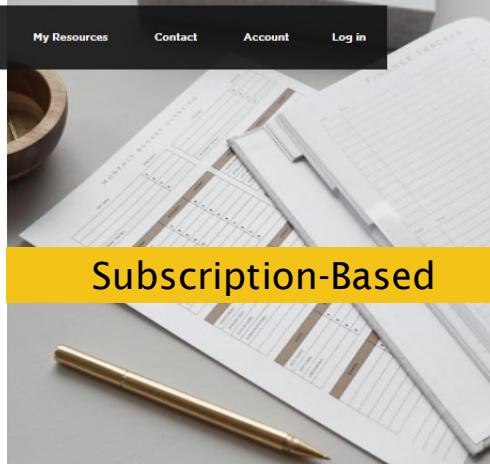
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