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October 18th, 2021

IRS Guidance Clarifies Application of COVID-19 Outbreak Period Extensions to COBRA Election and Payment Deadlines

The IRS (in coordination with the DOL and HHS) has issued guidance on the application of the COVID-19 Outbreak Period extensions to COBRA election and premium payment deadlines. In 2020, the agencies specified that the COVID-19 Outbreak Period—defined as the period beginning March 1, 2020, and ending 60 days after the announced end of the COVID-19 emergency—is disregarded when calculating COBRA election and payment deadlines. In early 2021, the DOL clarified that the extensions are measured on a case-by-case basis and end on the earlier of (1) one year from the original election or payment due date, or (2) the end of the Outbreak Period.

The latest guidance further clarifies that, subject to limited transition relief, the disregarded period for electing COBRA and the disregarded period for making initial and subsequent COBRA premium payments generally run concurrently. This means that (1) individuals electing COBRA outside of the initial 60-day election period generally have one year and 105 days (one year plus the 60-day election period and the 45-day initial payment period) after the election notice is provided to make the initial premium payment; and (2) individuals electing COBRA within the 60-day election period have one year and 45 days after the date of their election to make the initial payment. Subsequent premium payments are due one year from the date the payment would have otherwise been due. Applying the disregarded periods in this way means that individuals who delay electing COBRA may not have more than one year of total disregarded time for the COBRA election and initial premium payment. A transition rule provides that in no event will an initial COBRA premium payment be due before November 1, 2021, so long as the individual makes the initial COBRA premium payment within one year and 45 days after the election date. The transition rule is intended to avoid inequitable outcomes to individuals who may have assumed that the disregarded period for the initial premium payment began on the date of the COBRA election.

The guidance emphasizes that the Outbreak Period extensions do not apply to the provision of notices under the American Rescue Plan Act of 2021 (ARPA) or to elections of the COBRA subsidy. Individuals who have a disregarded period due to the Outbreak Period extensions may elect retroactive COBRA coverage and may elect COBRA with the subsidy for any period for which they are eligible for the subsidy. The Outbreak Period extensions continue to apply to COBRA premium payments after the end of the subsidy period, to the extent the individual is still eligible for COBRA and the Outbreak Period has not ended.

Available at <https://www.irs.gov/pub/irs-drop/n-21-58.pdf>

Please visit <http://www.moreton.com/news-events/> for more information and to view other client alerts. This Client Alert was written by Carolyn Cox, Moreton & Company's in-house corporate counsel who provides our clients with compliance services. For additional questions, please contact Carolyn at 801-715-7110 or ccox@moreton.com.

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