



LEHR MIDDLEBROOKS
VREELAND & THOMPSON, P.C.

LABOR • EMPLOYMENT • BENEFITS

April 12, 2021

DOL ISSUES MODEL NOTICES FOR COBRA SUBSIDIES AND EEO-1 DEADLINE SET FOR JULY 19, 2021

The American Rescue Plan Act included a provision for temporary premium assistance for COBRA continuation coverage for Assistance Eligible Individuals (AEIs). An AEI is a COBRA-qualified beneficiary who is eligible for COBRA coverage due to a reduction of hours or involuntary termination (but not gross misconduct*) who is not eligible for another health plan.

The law provides for an extended election period so that eligible employees and former employees who either did not elect COBRA initially or who dropped COBRA coverage can reenroll. These employees and former employees must receive notice of this extended election period by May 31, 2021 and will have 60 days after notice is provided to elect COBRA. The DOL has issued its model notices and frequently asked questions relative to the extended election period here: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>.

Any AEI who is or would have been (had they selected COBRA initially) eligible to receive COBRA at any point during April 1-September 30, 2021, should receive a notice. We encourage employers to use the DOL model notices without modification and to work with benefits providers to ensure all AEIs receive the notice.

*There is no COBRA-specific statutory or regulatory definition of *gross misconduct*. Thus, courts determine the application of this exception on a case-by-case basis. In general, courts have interpreted this exception narrowly and have found the existence of *gross misconduct* only in the most egregious and intentional offenses. Some courts have additionally required that the employer be able to establish that the employee was actually guilty of the gross misconduct, not just that the employer reasonably believed that the employee had committed gross misconduct. We encourage you to consult with counsel before applying this exception to COBRA coverage.

Deadline for 2019 and 2020 EEO-1 Component 1 data is July 19, 2021.

The EEOC delayed the collecting of 2019 EEO-1 Component 1 data due to COVID-19. The Agency recently announced that it will collect both 2019 and 2020 EEO-1 Component 1 data in the window between April 26, 2021 and July 19, 2021. The EEOC has launched a new website for data collection at <https://EEOCdata.org>.