



UBA
Compliance Advisor

What every HR leader should know about compliance



IRS Guidance on Reduction in Hours for COBRA Subsidy Eligibility

May 26, 2021

2-Minute Read

The IRS recently issued [IRS Notice 2021-31](#) in the form of FAQs, which provides extensive guidance on the COBRA subsidy under the American Rescue Plan Act of 2021 (ARP). Previously, the Department of Labor (DOL), in consultation with the Department of Treasury and the IRS, issued [FAQs](#) written for the benefit of participants and beneficiaries regarding the temporary 100% COBRA subsidy mandated by the ARP. UBA issued an [Advisor](#) containing links to those FAQs as well and to the model notices and forms necessary to implement and administer the COBRA Subsidy.

The COBRA subsidy is required to be provided to eligible individuals who experience an involuntary termination of employment or reduction in hours and that have not exhausted the maximum COBRA coverage period as of April 1, 2021. The ARP extends to those individuals an opportunity to make a COBRA election during a special election period that begins on April 1, 2021, and ends on May 31, 2021. The duration of the COBRA Subsidy period is six months, ending on September 30, 2021.

This Advisor solely focuses on the meaning of reduction in hours of employment for COBRA subsidy eligibility purposes. UBA previously issued an [Advisor](#) on the IRS guidance defining involuntary termination for purposes of the subsidy.

In the Notice, Q&A 21 through 23 apply solely for purposes of determining whether there is a reduction in hours for purposes of the COBRA subsidy, but not for any other purposes of the Internal Revenue Code or any other law.



Voluntary Reduction in Hours

Q&A 21 provides that a qualified beneficiary's voluntary reduction in hours may be a qualifying event that would make the individual COBRA and subsidy eligible. The Notice confirms that the reduction in hours is a qualifying event, whether voluntary or involuntary.

Involuntary Furlough

Q&A 22 confirms that an employee furlough constitutes a COBRA qualifying event. Accordingly, furloughed employees who lose health coverage would be eligible for the COBRA subsidy. In the Notice, "furlough" is defined as the temporary loss of employment or complete reduction in hours with a reasonable expectation of return to employment or resumption of hours (for example, due to an expected business recovery of the employer) such that the employer and employee intend to maintain the employment relationship. The Notice indicates that a furlough may be a reduction in hours regardless of whether the employer initiated the furlough, or the individual participated in a furlough process analogous to a window program.

Employees on Strike

Q&A 23 provides that a work stoppage as the result of a lawful strike initiated by employees or their representatives or a lockout initiated by the employer constitutes an involuntary termination, as long as at the time the work stoppage or the lawful strike commences the employer and employee intend to maintain the employment relationship.

This information is general and is provided for educational purposes only. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.