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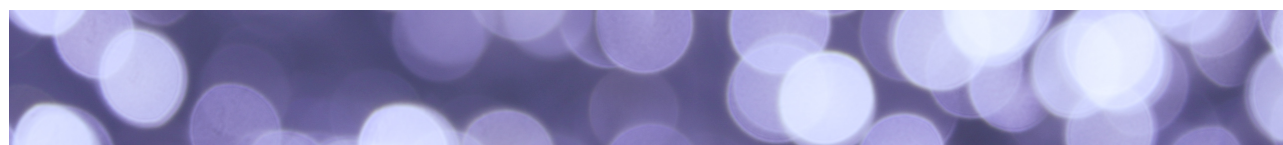
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PELRAS UPDATE

Public Employer Labor Relations
Advisory Service

April 2021



American Rescue Plan Act and Temporary COBRA Subsidies For Qualifying Individuals

By Julie A. Aquino, Esq.

The 2021 American Rescue Plan Act includes important new COBRA subsidies, effective April 1 through September 30, 2021. Compliance with the new program is mandatory and it applies broadly to almost all employers and health plans. The COBRA subsidy program is mandatory for any group health plan sponsored by an employer, union, or state or local government that is subject to COBRA, and to those enrolled in group health insurance under state mini-COBRA laws.

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Takeaways

- The 2021 American Rescue Plan Act includes temporary COBRA subsidies, effective April 1 through September 30, 2021. Compliance with the new program is mandatory and it applies broadly to any group health plan sponsored by an employer, union, or state or local government that is subject to COBRA.

- For employees involuntarily terminated and eligible for COBRA, the terminated employee is not responsible for the monthly COBRA continuation premiums during the six-month subsidy period. The subsidy is not available for employees who voluntarily resign or who were terminated for “gross misconduct.”
- The subsidy is not available for those who become eligible for health coverage from another source, such as a new employer, a spouse, or Medicare, or for those who qualify for COBRA coverage for reasons other than involuntary termination or reduction in hours, such as a divorce.
- Qualified individuals separated prior to April 1, 2021 who are still within their COBRA coverage period are eligible for the subsidy even if they had turned down or discontinued COBRA coverage before the subsidy was available.
- Compliance includes certain mandatory notices which are available on the U.S. Department of Labor’s website.

The Bottom Line

The 2021 American Rescue Plan Act includes temporary COBRA subsidies, effective April 1 through September 30, 2021, for employees involuntarily terminated and eligible for COBRA. Compliance with the new COBRA premium assistance program is mandatory and it applies broadly to almost all employers and health plans. The subsidy is available to qualifying individuals who are currently enrolled in COBRA continuation coverage and those who become eligible over the next six months. Qualified individuals separated prior to April 1, 2021 who are still within their COBRA coverage period are also eligible for the subsidy, even if they had turned down or discontinued COBRA coverage before the subsidy was available.

Department of Labor Issues Opinion Letter Clarifying Compensability of Travel Time for Teleworking Employees

By Jonathan F. Whalen, Esq.

With the prevalence of remote work due to the pandemic, employers are asking how non-exempt employees are compensated if they travel from their home office to a worksite within the same workday. The U.S. Department of Labor (“DOL”) issued an Opinion Letter on December 31, 2020 addressing this question against the backdrop of the following principles: 1) the Fair Labor Standards Act (“FLSA”) requires that employees be compensated for “working,” which means that they must be compensated for actions taken “for the benefit of the employer,” 2) an employee does not need to be paid for hours that she is off duty, and 3) normal commuting is specifically excluded from compensable hours.

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Takeaways

- The fact that non-exempt employees may be teleworking does not change the general rule that commuting time is non-compensable. If a non-exempt employee commutes from a home office and into a regular worksite during the middle of a workday, such time is likely not compensable if the employee attended personal appointments or ran personal errands in between working at the two different locations.
- A non-exempt teleworking employee's personal travel time is not compensable, even though that employee may perform some work before or after the personal travel, and although the employee may travel to the worksite after the performance of personal tasks. Such an employee is deemed to have been relieved from duty during the period of the personal travel.
- If an employer *requires* a non-exempt employee to split their workday between a home and regular office, with *no personal time* allowed in between, such travel time may be compensable under the "continuous workday" or "worksite-to-worksite" doctrines.

The Bottom Line

The Department of Labor issued an Opinion Letter on December 31, 2020 addressing the question of whether non-exempt employees who telework and travel during the workday must be compensated for the travel time. The answer is that it depends on the circumstances. Normal commuting time and personal, off-duty travel time remains non-compensable under the Fair Labor Standards Act. Therefore, mid-day travel time connected with attending personal appointments or running personal errands is not compensable. However, if an employer *requires* a non-exempt employee to split their workday between a home and regular office, *with no personal time allowed in between* working at the two different locations, such travel time may be compensable under the "continuous workday" or "worksite-to-worksite" doctrines.

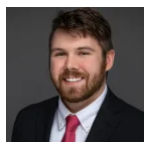
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