



May 12th at 11:00 am

# May Legislative HR Updates

*We'll cover:*

- New Unemployment Benefits Work Search Requirements
- ARPA Programs
- VA Overtime Wage Act

# Unemployment Benefits: What's the Latest?





# The Reinstatement of Work Search Requirements

- Tennessee – October 4, 2020
- Texas – November 1, 2020
- Florida – January 2, 2021
- Colorado – February 1, 2021
- North Carolina – March 14, 2021
- Kentucky – May 9, 2021
- Virginia – Week of May 30, 2021



# Work Search Requirements

## WHAT YOU NEED TO KNOW

- You must be able to work and available for work.
- You must register online at [vawc.virginia.gov](http://vawc.virginia.gov) or a workforce services agency if you live outside Virginia.
- Beginning the week of May 30th you must make a minimum of two job contacts a week and report it online or over the phone.
  - Online at <https://www.getgov2go.com/>
  - Over the phone at 800-897-5630

A decorative graphic consisting of several small yellow squares of varying sizes, arranged in a sparse, abstract pattern in the top left corner of the slide.

## **Note: Responses to Blind Ads for jobs or openings are not acceptable as job contacts**

**A blind ad would be any job announcement or advertisement where the name  
of the employer/company is not provided**

- For every job you apply to, you must retain the as much of the following information that you have regarding a job contact for one year, as VEC can request it at any time:
  - Month, day, and year of contact
  - Complete name of employer contacted
  - Complete address (street, P.O. Box number, city, state, zip code) of employer contacted
  - First and last name of the individual for the employer/company with whom you talked
  - Telephone number of the employer; fax number; and e-mail or web address
  - Type of work or position for which you applied
  - Result of contact
  - If you applied to a job online, an email confirmation of your application

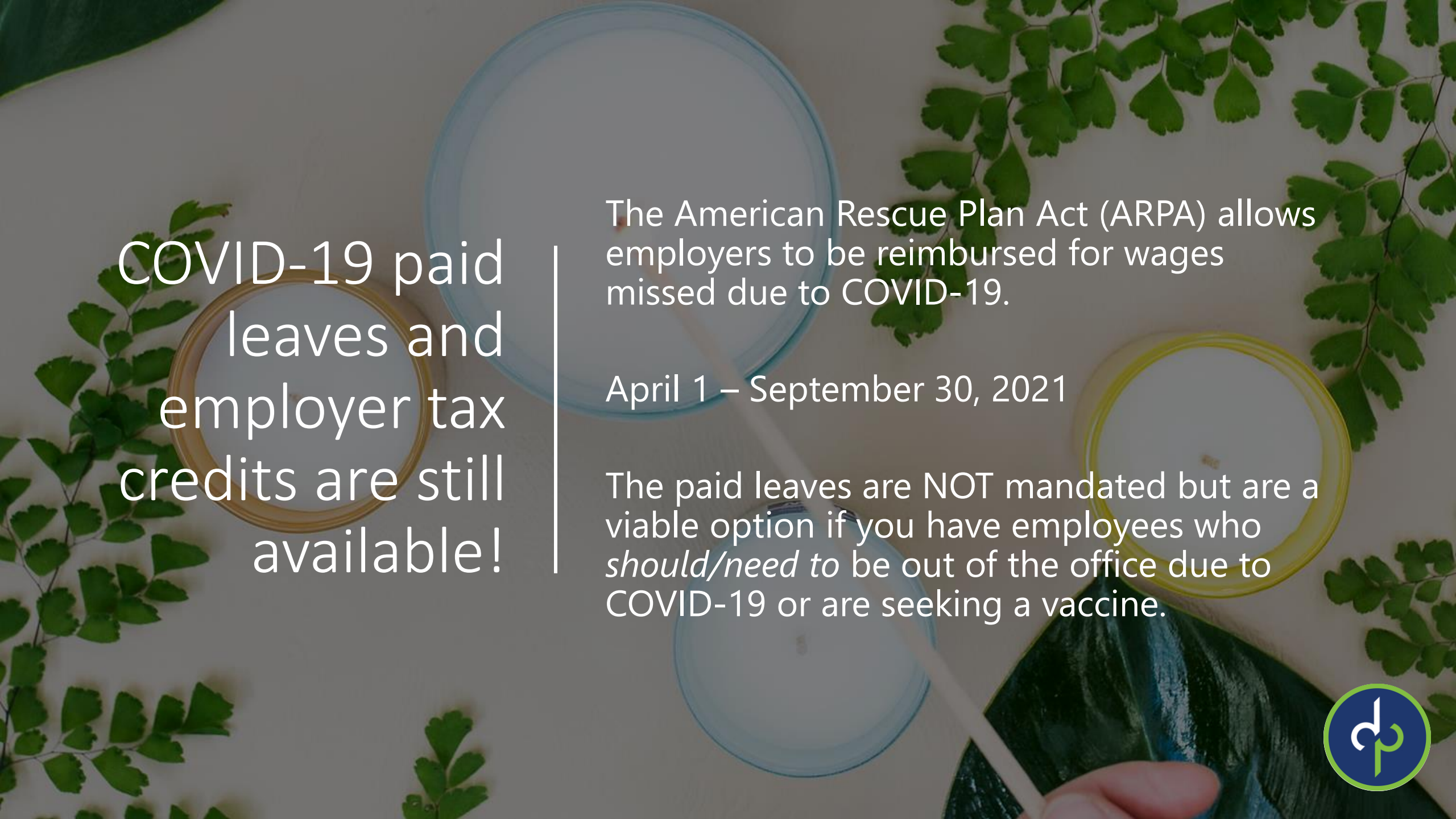
**NOTE: YOU DO NOT HAVE TO GO INTO AN OFFICE  
TO COMPLETE THESE REQUIREMENTS**



A heart-shaped white bowl filled with a mix of fresh berries, including strawberries, blueberries, and blackberries. The bowl is centered in the background of the slide.

# Paid Leaves for COVID-19 Illness and Vaccine



The background of the slide is a top-down view of a paint palette with several wells of white paint. The palette is surrounded by green fern-like foliage. A thin white vertical line separates the left text from the right text.

# COVID-19 paid leaves and employer tax credits are still available!

The American Rescue Plan Act (ARPA) allows employers to be reimbursed for wages missed due to COVID-19.

April 1 – September 30, 2021

The paid leaves are NOT mandated but are a viable option if you have employees who *should/need to* be out of the office due to COVID-19 or are seeking a vaccine.





A close-up photograph of a person's hands using a clear plastic hand sanitizer bottle with a white pump dispenser. The person is wearing a dark long-sleeved shirt. The background is a plain, light-colored wall. The image is overlaid with white text.

Remember...

OSHA's General Duty Clause states:

"Employers have the responsibility to provide a safe and healthful workplace that is free from serious recognized hazards."

This includes deadly viruses. Using FFCRA paid leaves helps you too.

# What Stays the Same?

- Employers with < 500 employees only
- Benefits should continue during paid leaves
- Employers should not discriminate or otherwise retaliate against employees who take paid leave
- Tax credit occurs in real-time via payroll process
- Max amount of tax credit is either \$200 or \$511 per day for Emergency Paid Sick Leave (EPSL), depending on qualifying reason
- Max amount of tax credit is \$200 per day for Emergency FMLA (EFMLA)
- Allow employees to use *before* PTO



# What Changes?

## EPSL

- As of April 1, employees can take EPSL to get the COVID-19 vaccine and to recover from any side effects.
- Employees can take EPSL when seeking or waiting for a COVID-19 diagnosis or test result if they've been exposed to COVID-19 or if the employer has asked them to get a diagnosis or test.
- All employees were eligible for a new bank of leave on April 1. Full-time employees get 80 hours; part-time employees get a prorated amount.
- Employers can't provide EPSL in a manner that favors highly compensated employees or full-time employees or that discriminates based on how long employees have worked for the employer.





# What Changes?

## EFMLA

- Now can be used for *any EPSL reason*, in addition to the original childcare reasons. This includes vaccine reasons.
- The 10-day unpaid waiting period has been eliminated. Now 12 full weeks.
- Max reimbursable tax credit increased to \$12,000 (from \$10,000).
- The law isn't clear as to whether employees are entitled to a **new** 12-week bank of EFMLA. Awaiting guidance. It is possible that an employee will be entitled to additional *unpaid* protected time off.





# What Changes?

## EFMLA, *continued*

- Employers MAY NOT provide EFMLA in a manner that favors highly compensated employees or full-time employees or that is based on how long employees have worked for the employer. (Again, be aware that any inconsistencies in the granting of leave could potentially lead to a discrimination claim.)
- Allow employees to use EFMLA before using PTO if they want to.





# Qualifying Reasons are Now All the Same!

*\*Plus, NEW reasons*

1. When quarantined or isolated subject to federal, state, or local quarantine or isolation order
2. When advised by a health care provider to self-quarantine because of COVID-19
3. When the employee is:
  - Experiencing symptoms of COVID-19 and seeking a medical diagnosis
  - Seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 because they have been exposed or because their employer has requested the test or diagnosis
  - Obtaining a COVID-19 vaccination or recovering from any related injury, disability, illness, or condition





# Qualifying Reasons are Now All the Same!

\*

4. When caring for another person who is isolating or quarantining on government or doctor's orders
5. When caring for a child whose school or place of care is closed due to COVID-19

\*Employees and employers will—in most cases—want to exhaust EPSL first, since it has a higher tax credit, except when used to care for others.





# Tax Credit Review

The tax credits available between April 1 and September 30 are the same as under the original FFCRA, except for the increased aggregate cap for EFMLA. Tax credits are available as described below, regardless of how much EPSL or EFMLA an employee used prior to April 1.

- The credit available for **EPSL** when used for reasons 1, 2, or 3 (self-care) is up to 100% of an employee's regular pay, with a limit of \$511 per day.
- The credit available for **EPSL** when used for reasons 4 or 5 (care for another) is up to 2/3 of an employee's regular rate of pay, with a limit of \$200 per day.
- The credit available for **EFMLA** for any reason is up to 2/3 of an employee's regular pay, with a limit of \$200 per day and a cap of \$12,000 per employee.





# What is ARP COBRA Premium Assistance?





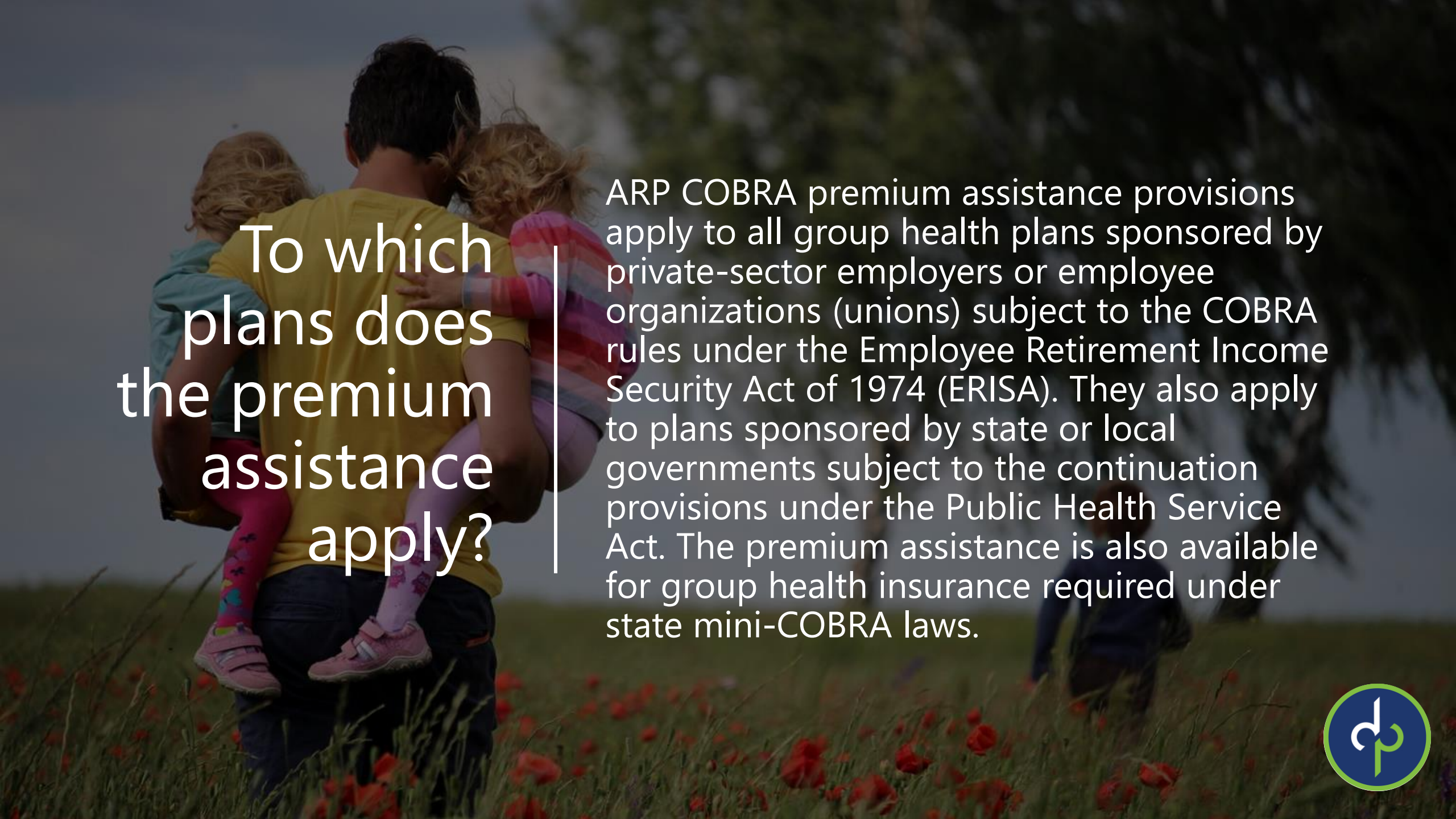
# ARP COBRA Premium Assistance

Section 9501 of the American Rescue Plan (ARP) provides for COBRA premium assistance to help “Assistance Eligible Individuals” (more on this in a minute!) continue their health benefits. The premium assistance is also available for continuation coverage under certain State laws. “Assistance Eligible Individuals” are not required to pay their COBRA continuation coverage premiums. The premium assistance applies to periods of health coverage on or after April 1, 2021, through September 30, 2021.

**An employer or plan to whom COBRA premiums are payable is entitled to a tax credit for the amount of the premium assistance.**







# To which plans does the premium assistance apply?

ARP COBRA premium assistance provisions apply to all group health plans sponsored by private-sector employers or employee organizations (unions) subject to the COBRA rules under the Employee Retirement Income Security Act of 1974 (ERISA). They also apply to plans sponsored by state or local governments subject to the continuation provisions under the Public Health Service Act. The premium assistance is also available for group health insurance required under state mini-COBRA laws.





# Who is eligible to receive the COBRA premium assistance?

An “assistance eligible individual” is:

- One who has lost coverage due to an involuntary termination or reduction in hours on or after October 1, 2019, and who would otherwise be eligible during the timeframe between April 1, 2021, and September 30, 2021 (“Period of Coverage”), including individuals who lose coverage *during* the Period of Coverage due to an involuntary termination of employment or because of a reduction of hours
- One who lost coverage and did not elect COBRA but would otherwise have been eligible for the premium subsidy during Period of Coverage.
- One who elected and terminated coverage prior to 4/1 and who would otherwise be eligible for the premium subsidy.





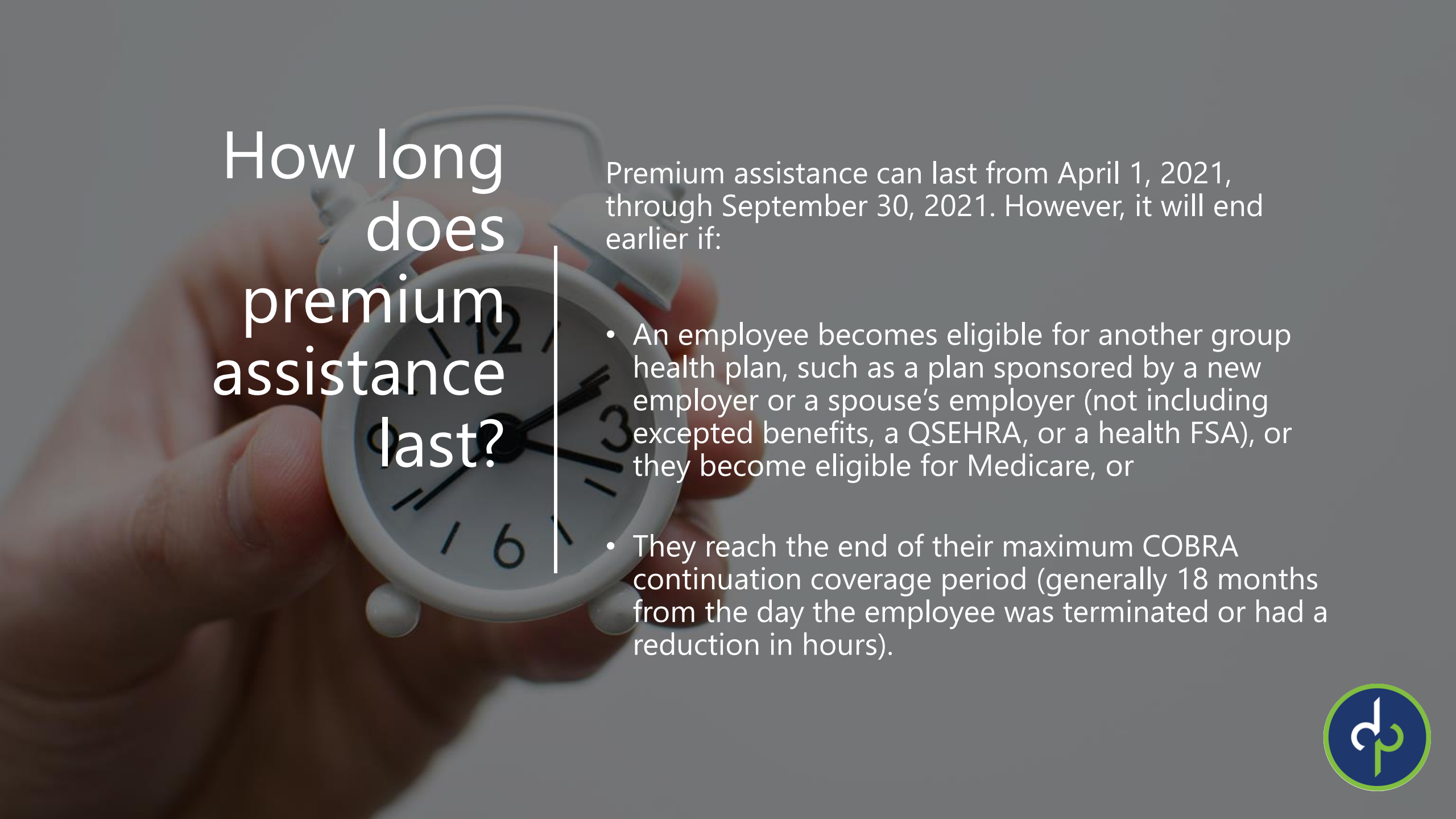
# Who is NOT eligible to receive the COBRA premium assistance?

Someone who is eligible for other group health coverage, such as through a new employer's plan or a spouse's plan, or if they are eligible for Medicare.

Note that if a person has individual health insurance coverage, such as a plan through the Health Insurance Marketplace, or through Medicaid, they may be eligible for premium assistance. However, if you elect to enroll in COBRA continuation coverage with premium assistance, you will no longer be eligible for a premium tax credit, advance payments of the premium tax credit, or the health insurance tax credit for your health coverage during that period.

Note: If the employee's termination of employment was for gross misconduct or if they voluntarily separated or reduced hours, the employee and any dependents would not qualify for COBRA continuation coverage or the premium assistance.





# How long does premium assistance last?

Premium assistance can last from April 1, 2021, through September 30, 2021. However, it will end earlier if:

- An employee becomes eligible for another group health plan, such as a plan sponsored by a new employer or a spouse's employer (not including excepted benefits, a QSEHRA, or a health FSA), or they become eligible for Medicare, or
- They reach the end of their maximum COBRA continuation coverage period (generally 18 months from the day the employee was terminated or had a reduction in hours).





# How will the premium assistance be provided?

Assistance Eligible Individuals do not have to pay any of the COBRA premium for the period of coverage from April 1, 2021, through September 30, 2021.

The premium is reimbursed directly to the employer, plan administrator, or insurance company through a COBRA premium assistance tax credit.

Employers will obtain the subsidy through a payroll tax credit against employers' quarterly taxes. If the credit exceeds the amount of payroll taxes due, the credit would be refundable when employers submit Form 941, their quarterly tax return. The credit could also be advanced under rules that will be set by the Treasury Department.





# How do I get the subsidy?

Contact your benefits administrator or plan provider to determine who on your team is eligible. They may already have reached out.

They will send required notices to Assistance Eligible Individuals no later than May 31.

Once that's determined, let us know and we will apply the tax credits.

If you don't have a COBRA admin service, we can recommend one! Integrates with iSolved, so once someone is termed, the service automatically kicks in.





# Virginia Overtime Wage Act (VOWA)



# Virginia Overtime Wage Act (VOWA)

**Applies to non-exempt, salaried employees only.**



Until now, Virginia employees relied on the Fair Labor Standards Act (FLSA) to govern their overtime pay claims.

Like the FLSA, VOWA requires that all **non-exempt employees** receive “time and a half” for hours worked over 40 hours in a workweek.





# What Changes

VOWA departs from the FLSA in three ways that could increase your liability, including:

- Changing the calculation of regular rate of pay for non-exempt salaried employees
- Giving employees three years to bring lawsuits from the date of the violation, regardless of whether the violation was willful
- Omitting good faith defenses for employers and providing for potential triple damages and interest



# Regular Rate of Pay Calculation under FLSA

Under the FLSA and VOWA, non-exempt employees are to be paid 1.5x their “regular rate of pay” for hours worked more than 40 hours in a workweek.

Under the FLSA, employers calculate an employee’s regular rate as follows:

$$\begin{aligned} &\textit{Employees Total Weekly Compensation} / \\ &\textit{Total Hours Worked in Workweek} \\ &= \textit{Regular Rate of Pay} \end{aligned}$$

This is the same calculation for all non-exempt employees, whether they’re paid on an hourly, salary, or other basis.



# Regular Rate of Pay Calculation under VOWA

As of July 1, 2021, Virginia employers must calculate a non-exempt employee's regular rate of pay as follows, if that employee is paid on a salary basis.

$$\frac{\text{Employees Total Weekly Compensation}}{40 \text{ Hours}} = \text{Regular Rate of Pay}$$

Regardless of how many hours the employee actually worked that week. (Hourly employees should be calculated using the FLSA calculation described previously).





# The Old Math

Under the FLSA, a salaried employee that makes \$1,000 per week and worked 50 hours that week would have a regular rate of \$20 per hour ( $\$1,000 / 50$ ). Thus, all overtime should be paid to that employee at \$30 an hour (1.5 times \$20).

***$\$1,000 / 50 = \$20$  regular rate of pay***

***$\$20 \times 1.5 = \$30$***

***Straight time earnings = \$1,000***

***Overtime earnings = \$300 (10 x \$30)***

***Total earnings = \$1,300***



# The New Math

As of July 1 in VA, a non-exempt, salaried employee's regular rate of pay is determined by dividing \$1,000 by **40** – **regardless of how many hours they actually worked.**

***$\$1,000 / 40 = \$25$  regular rate of pay***

***$\$25 \times 1.5 = \$37.50$***

***Straight time earnings = \$1,000***

***Overtime earnings = \$375 (10 x \$37.5)***

***Total earnings = \$1,375***







# Statute of Limitations

Under the FLSA, suits must be filed within two years, or within three years if the employee can prove that the violation was "willful."

Under VOWA, all employees have three years to file suit regardless of whether or not the violation was "willful."

Employees can recover back wages for that three-year period.





# Available Remedies

As with FSLA, VOWA also provides for the recovery of lost wages plus liquidated damages BUT has no good faith exception for employers.

If the court determines that the violation was “knowing,” then the employer may have to pay *triple* damages.

The law also requires the employer to pay prejudgment interest at the rate of 8% from the date that wages were due, and if found liable, the employee’s reasonable attorney’s fees and costs.

VOWA also allows employees to bring their cases as class action or collective actions.





Submit questions to  
[questions@dominionpayroll.com](mailto:questions@dominionpayroll.com)

Stay safe out there!

