

## Unmasking the Implications of the New Stimulus Package for Employers

The American Rescue Plan Act of 2021 (ARPA), a \$1.9 trillion stimulus package signed into law by President Biden on March 11, 2021, aims to bring relief and support to individuals, businesses, and communities suffering from the effects of the COVID-19 crisis. In addition to providing stimulus checks to individuals and families and funding vaccinations, among other things, there are a number of employment law implications important for employers to understand.

### EXPANSION OF (VOLUNTARY) FFCRA

The tax credits available under the federal Families First Coronavirus Response Act (FFCRA), which took effect on April 1, 2020 (which we previously addressed, click [here](#) for the article), expired at the end of 2020. However, the December 2020 stimulus package extended the availability of the tax credits through March 31, 2021, for covered employers who voluntarily elect to pay otherwise eligible employees for qualifying leave under the FFCRA.

Now, under the ARPA, covered employers can continue to voluntarily provide qualifying leave under the FFCRA (i.e., emergency paid sick leave (EPSL) or emergency family and medical leave (EFMLA)) to eligible employees through September 30, 2021, and receive the tax credits on such employee wages. To be clear, the ARPA contains no new mandate that employers provide FFCRA leave – it simply extends the availability of the tax credits for covered employers who elect to pay employees for such leave.

While FFCRA leave is no longer mandatory, the ARPA did make some changes to the FFCRA to expand employee eligibility and the availability of the tax credits to employers who elect to provide FFCRA leave to their employees, which include the following:

- Employers may allow employees to take an additional 10 days of EPSL beginning April 1, 2021, for which employers may claim tax credits.
- The ARPA expands the EPSL qualifying reasons to include leave for an employee who is: (1) seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19, and such employee has been exposed to COVID-19 or the employee's employer has requested such test or diagnosis; (2) obtaining immunization related to COVID-19; or (3) recovering from any injury, disability, illness, or condition related to a COVID-19 immunization.
- The ARPA expands the qualifying EFMLA reasons to include EPSL reasons, eliminates the requirement that the first 10 days of EFMLA be unpaid, and increases the per employee aggregate tax credit cap for EFMLA from \$10,000 to \$12,000.
- Employers are disqualified from receiving a tax credit if they discriminate in favor of highly compensated employees, full-time employees, or employees on the basis of their employment tenure.

Although not mandatory, covered employers should consider providing the extended FFCRA leave to employees pursuant to the ARPA as the leave could incentivize employees to get vaccinated and there are tax credits available to the employer. In addition, there are state law requirements – such as under New York law – that provide for paid leave to employees for COVID-19-related reasons, including, most recently, a New York requirement that employers provide paid leave to employees for

purposes of obtaining COVID-19 vaccine injections, which we discuss in more detail [here](#). Arguably, such leaves may run concurrently with leave taken under the FFCRA and employers can avail themselves of the tax credits pursuant to the ARPA as opposed to bearing the whole expense themselves.

## CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA) PREMIUM ASSISTANCE

The ARPA makes available COBRA premium assistance for individuals (referred to as “assistance eligible individuals”) who, due to an involuntary termination or reduction in hours, become eligible for COBRA or already have COBRA continuation coverage, during the period from April 1, 2021 through September 30, 2021. During such period, assistance eligible individuals, without making any payment, will be deemed to have paid 100% of their COBRA premiums, including any administrative fees. Employers will be reimbursed for the COBRA premiums (and administrative fees) through a tax credit.

COBRA premium assistance is also available to individuals who qualified for COBRA continuation coverage due to involuntary termination or reduction in hours but who had not elected COBRA continuation coverage as of April 1, 2021, or who elected but discontinued it prior to April 1, 2021. There is an extended election period for such individuals beginning on April 1, 2021 and ending 60 days after the date on which the plan administrator provides the newly required notice alerting individuals that they qualify for COBRA premium assistance under the ARPA. Coverage for such individuals will begin with the first period of coverage on or after April 1, 2021, and will not extend beyond the maximum period of coverage that would have been available if the individual had elected COBRA continuation coverage or had not discontinued it, as applicable.

Plan administrators must provide individuals who become eligible to elect COBRA continuation coverage from April 1, 2021, until September 30,

2021, with COBRA election notices that include certain additional information such as:

- The availability of COBRA premium assistance under the ARPA and a description of forms required to establish eligibility.
- The name, address, and telephone number for the plan administrator and other individuals with relevant information concerning COBRA premium assistance.
- The option to enroll in different coverage (plan enrollment option) if the employer permits assistance eligible individuals to elect enrollment in the different coverage.
- An explanation of the extended election period.
- A notification that individuals must inform their group health plan of an expiration event, such as if they become eligible for other group health coverage or Medicare, otherwise the individual may be subject to a financial penalty.

Employers should monitor for additional guidance regarding COBRA premium assistance, including clarification on eligibility issues, the content of required notices to employees, and employer reimbursements and tax credits for unpaid premiums.

## UNEMPLOYMENT BENEFITS CONTINUATION

The ARPA also extends the Federal Pandemic Unemployment Compensation program providing the \$300 per week supplemental unemployment benefits for weeks of unemployment through September 6, 2021. This benefit was previously set to expire on March 14, 2021. Up to \$10,200 of unemployment compensation will be tax-exempt for households earning less than \$150,000 per year. Notably, since the ARPA does not provide a different threshold for single or joint filers, each spouse can apply the maximum \$10,200 exclusion, and thus a total of \$20,400 can be exempted for spouses filing joint returns.

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The foregoing is an overview of some of the highlights of the ARPA's implications on employers. It will be critical for employers to work with their counsel to understand the effects of the ARPA on their businesses and to ensure they are taking any necessary or appropriate steps to account for these changes to the law.

For more information regarding the topic discussed, please contact any member of Tannenbaum Helpern's Employment Law practice or your usual Tannenbaum Helpern contact.

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