American Rescue Plan Act of 2021

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President Biden signed the American Rescue Plan Act of 2021 (ARPA) into law on March 11, 2021. ARPA continues certain relief programs established by the CARES Act, in addition to creating new programs and tax credits to provide relief to employers and individuals.

COBRA Subsidy

The newly established COBRA subsidy allows individuals experiencing certain COBRA qualifying events, and their spouses and dependents, to continue their employer sponsored healthcare at zero cost beginning April 1 through September 1, 2021.

COBRA beneficiaries are typically responsible for paying related premiums and an administrative fee of up to 2% of the premium. ARPA requires employers to pay 100% of the monthly premium for COBRA (or state continuation coverage) and gives employers a refundable tax credit for 100% of these costs through a payroll tax credit.

COBRA beneficiaries who are subject to involuntary termination or a reduction in hours that led to the loss of healthcare coverage are eligible for the COBRA subsidy. Individuals currently enrolled in COBRA or currently in an election period are also eligible for the subsidy. Individuals who voluntarily left their position are not eligible for the subsidy.

The COBRA Subsidy applies to group benefits, but does not apply to flexible spending accounts. It is currently unclear whether the subsidy will apply to vision or dental benefits.

Because some eligible beneficiaries may have decided to forgo COBRA benefits due to the financial burden, ARPA provides beneficiaries the opportunity to retroactively elect COBRA benefits, or to begin receiving the benefits on April 1.

The COBRA Subsidy ends if the beneficiary becomes eligible for coverage under Medicare or another group health plan, for example through new employment. The subsidy also ends once the beneficiary reaches the end of their maximum COBRA (or state continuation) coverage period, which typically runs for 18-months.

Eligible beneficiaries must notify their former employer if they are no longer eligible for the subsidy. Failure on their part to do so may result in a fine to the individual of $250, with a maximum penalty of 110% of the full subsidy amount if it is found the failure to notify was deliberate.

Employers must provide COBRA notice forms to any eligible individuals informing them of the new subsidy. Updated notices should be provided to those already receiving COBRA benefits. The notices must be sent out within sixty days of April 1. The Department of Labor is expected to release model forms by April 10.

Continued Tax Credits Under Family First Coronavirus Relief Act (FFCRA)

The FFCRA required covered employers with fewer than 500 employees to provide emergency paid sick leave (EPSL), and expanded family and medical leave (EFML) programs. The FFCRA initially expired December 31, 2020, but the related federal tax credits were extended through March 31, 2021. ARPA further extends the availability of this tax credit through September 30, 2021. As with the extension to March 31, 2021, employer's provision of leave continues to be optional.

ARPA also expands the eligible reasons for taking paid leave. Eligible reasons now include: (1) obtaining a COVID-19 vaccine; (2) recovering from a condition, illness, or disability related to receiving the vaccine; and (3) seeking or awaiting results of a COVID-19 test or diagnosis if the employee has been exposed or the employee's employer directed the employee to obtain such test or diagnosis.

Additionally, beginning April 1, 2021 the eligible reasons an employee may take EPSL are now identical to those for which an employee may take EMFL. Accordingly, under both programs, employees are entitled to leave:

1) When quarantined or isolated due to federal, state, or local quarantine or isolation order.
2) When advised by a health care provider to self-quarantine.
3) When the employee is:
• experiencing symptoms of COVID-19 and seeking a medical diagnosis.
• seeking or awaiting the results of a test or diagnosis of COVID-19 because they have been exposed to COVID-19 or their employer has requested such test.
• obtaining a COVID-19 vaccine or recovering from side effects related thereto.
4) When providing care for another individual who is in isolation or quarantine on orders of the government or a doctor.
5) When providing care for a child whose school or other place of care is closed due to COVID-19.

ARPA resets the limit on tax credits available to employers for providing employees with EPSL. Employers may provide up to 80-hours of EPSL from April 1 through September 1, 2021, in addition to any ESPL provided before April 1, 2021.

ARPA also increased the maximum tax credit available to employers under EMFL from $10,000 per employee to $12,000 per employee, on an annual basis. Employers may be denied this increase in the tax credit if it is found they treated highly compensated employees, full time equivalent employees, or more tenured employees differently under their voluntary paid leave programs. Employers should note that treating employees differently under their voluntary paid leave program also runs the risk of discrimination claims.

The annual contribution limit to Dependent Care Assistance Programs (DCAP) has also been increased. DCAP participants may now contribute up to $10,500 for 2021, a figure more than twice the typical contribution limit of $5,000. The increased limit is not mandatory and the DCAP plan must be amended to allow for the new maximum contribution. ARPA enables employers to amend the plan up to the last day of the plan year, with the amendment given retroactive effect. Employers are encouraged to decide whether they will increase the maximum contribution as soon as possible so that plan participants may spread their payroll deductions across as many pay periods as possible.

ARPA extends the Employee Retention Tax Credit (ERTC) through the end of 2021. The ERTC was introduced as part of the CARES Act. As an incentive to employers to keep employees on the payroll, the ERTC gives a refundable payroll tax credit to eligible employers based on the amount of qualified wages paid to employees. Rules regarding the tax credit will be divided into three categories, based on when the wages were paid. The three periods are as follows: (1) wages paid from March 12, 2020 through December 31, 2020; (2) wages paid in the first half of 2021; and (3) wages paid in the second half of 2021. There will be limitations on claiming this tax credit in conjunction with PPP Loan forgiveness, to avoid duplicative reimbursement. Wages paid in 2021 will have a maximum available credit of $7,000 per employee per quarter; this is an increase from the $5,000 per employee allowed for wages paid during the applicable 2020 period.

Federal Unemployment Insurance Assistance has also been extended through September 6, 2021. This means individuals taking Unemployment Insurance benefits may receive an additional $300 per week. The Pandemic Unemployment Assistance (PUA) Program, which provides benefits to those who may not otherwise qualify for state benefits (e.g. independent contractors, self employed individuals, business owners) has likewise been extended through September 6, 2021. Pandemic Emergency Unemployment Compensation (PEUC), which provides unemployment benefits to individuals who have exhausted their state benefits has also been extended through September 6, 2021.

This article is general in nature and does not constitute legal advice. Please note that new guidance is being provided by authorities on a daily basis so please monitor new developments and guidance, including but not limited to our firm's COVID-19 Resource Center. Readers with legal questions should consult the authors, Mark Opara (mopara@sb-kc.com), Char Heins (cheins@sb-kc.com) or any shareholders in Seigfreid Bingham's Employment Law Group, including: Shannon Johnson, John Neyens, John Vering, Brenda Hamilton, Julie Parisi, or Christopher Tillery or your regular contact at Seigfreid Bingham at 816-421-4460.