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American Rescue Plan Act provides additional COVID relief

On March 11, President Biden signed the American Rescue Plan Act, a $1.9 trillion coronavirus relief package. Along with additional funding for virus testing and vaccine distribution, the sweeping legislation includes provisions impacting employers, employees, and employee benefit plans. Among other economic relief, it expands unemployment benefits, increases aid to small businesses, and extends employment-related tax credits.

We'll be releasing additional issues of *FYI* that cover pension funding relief, COBRA subsidies, and other provisions of the Act that impact employers.

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Background

Last March, President Trump signed into law the $2.2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act. Since then, Congress has passed a series of pandemic aid bills with broad bipartisan support. The most recent legislation, the Consolidated Appropriations Act, 2021 (CAA), enacted in December, provided roughly $900 billion in additional COVID-related economic stimulus and relief. Among other things, it included numerous employee benefit and other employment-related provisions.

On March 11, 2021, President Biden signed the $1.9 trillion American Rescue Plan Act (ARPA or Act) to provide additional economic and pandemic-related aid to individuals, businesses, and state and local

American Rescue Plan Act two-part webinar series

Registration is open for both our March 24 webinar where our team of experts will explore the impact of the Act on pension plans and for the second part of the series on March 30 when we'll address its compliance implications on employment, health, and welfare benefits.

governments. Passed along party lines, the Act provides $1,400 stimulus checks for most Americans, adds funding for virus testing and the distribution of vaccines, contains significant employee benefit and other employment-related provisions, expands unemployment benefits, increases aid to small businesses, and extends and modifies certain business tax credits. Highlighted below are some of the provisions we expect will be of particular interest to employers.

Unemployment insurance benefits

The ARPA provides additional state funding and extends federally funded unemployment programs established under prior COVID legislation. Three significant programs were established under the CARES Act to assist workers who lost their jobs due to the pandemic:

- The Pandemic Unemployment Assistance (PUA) program provided up to 39 weeks of benefits to certain workers who were ineligible for state unemployment benefits such as self-employed workers, independent contractors, or those with a limited work history.
- The Pandemic Emergency Unemployment Compensation (PEUC) program provided 13 additional weeks of unemployment benefits to individuals who exhausted their regular state benefits.
- The Federal Pandemic Unemployment Compensation (FPUC) program provided an extra $600 weekly benefit on top of an individual's state unemployment benefit between April 5, 2020 and July 31, 2020.

In addition to covering 50% of nonprofits' and state and local governments' unemployment benefit costs, the CARES Act provided a 75% subsidy for costs incurred by employers that provide unemployment benefits on a reimbursable basis rather than through tax contributions. It also reimbursed states for 50% of the cost of waiving the "waiting week" for regular unemployment compensation and capped reimbursement at 50% for weeks ending after December 26, 2020.

The CAA extended both the PUA and PEUC benefits until March 14, 2021 and increased the maximum benefit an individual could claim to 50 weeks under the PUA and 24 weeks under the PEUC program. It also reinstated the FPUC supplemental weekly benefit that expired last July — but at the reduced rate of $300 for each week of unemployment between December 26, 2020 and March 14, 2021.

Extension of benefits

The ARPA renews and extends the $300 weekly unemployment benefit supplement under the FPUC for an additional 29 weeks through September 6, 2021. It also extends both the PUA and PEUC programs through September 6, 2021, and funds an additional 29 weeks of benefits under those programs. Specifically, it increases the total number of weeks of PUA benefits from 50 to 79 weeks and the maximum PEUC benefit from 24 to 53 weeks (which together with the typical state benefit of 26 weeks equals a total of 79 weeks of unemployment benefits). It also exempts the first $10,200 in

2020 unemployment benefits from federal income tax for households with adjusted gross incomes under $150,000.

> **Buck comment.** Whether, and to what extent, these extended benefits may disincentivize labor force participation and impact the readily available talent pool as states reopen and businesses look to rehire remains to be seen.

Federal funding

The CAA extended through March 14, 2021, CARES Act provisions that:

- Covered 50% of the costs of unemployment benefits for employees of state and local governments and nonprofit organizations
- Reimbursed states for the cost of waiving the "waiting week" for regular unemployment compensation and capped reimbursement at 50% for weeks ending after December 26, 2020

It also extended through March 14, 2021, Families First Coronavirus Response Act (FFCRA) unemployment provisions that: (1) allowed states with low balances in their unemployment trust funds to delay employer tax increases or other employer surcharges; and (2) provided temporary full federal financing of Extended Benefits (EB) for high-unemployment states. In addition, it waived through December 31, 2021, the mandatory "EB freeze period" for states that trigger back onto the program because of fluctuations in their unemployment rates.

The ARPA restores full federal reimbursement for state costs to provide benefits without a waiting period beginning December 31, 2020, and continues full EB funding for qualifying states through September 6, 2021. Additionally, it increases federal payments to non-profits and government agencies from 50 to 75% to cover the costs of unemployment benefits and extends the 75% subsidy for costs incurred by employers who provide unemployment benefits on a reimbursable basis through September 6, 2021. Further, it ensures that states would not begin accumulating interest on federal loans to pay state unemployment benefits before September 6, 2021.

Short-time compensation ("work-sharing") programs

Short-Time Compensation (STC) programs, also known as work-sharing or shared work programs, provide an alternative to layoffs for employers experiencing a reduction in business activity. Administered by the states, they allow employers to reduce hours of work for groups of employees in lieu of laying them off. Employees whose hours are reduced are able to collect a prorated portion of the unemployment compensation benefit they would have received if they were totally unemployed. Employers that participate in these programs can retain trained workers during a downturn and ease hiring and onboarding costs once business conditions improve.

The CAA extended through March 14, 2021, the CARES Act provisions that temporarily made 100% federal financing available for STC programs established under state law as well as a 50% subsidy for non-statutory, temporary state STC programs. The ARPA continues the full federal funding of programs established in state law and half the cost of temporary state programs through September 6, 2021.

Paid sick and family leave

The FFCRA enacted last March required covered employers (generally businesses with fewer than 500 employees and certain public employers) to provide COVID-related sick and family leave benefits through December 31, 2020, and provided a refundable tax credit to help them offset the costs. The mandate ensured that workers who contracted the virus or needed to care for family members who had it were able to take time off from work.

The CAA did not extend the FFCRA leave mandate into 2021. However, it continued to make the employment tax credit available through March 31, 2021, for private employers that opted to allow employees who did not exhaust their full FFCRA allotment (up to 80 hours of paid sick leave and 12 weeks of expanded family medical leave) in 2020 to take any remaining leave in the first quarter of 2021. The CAA modified the employer tax credits so that they applied as if the leave mandate had been extended through March 2021. (See our January 12, 2021 *FYI*.)

The ARPA extends the FFCRA tax credit through September 30, 2021, and makes several changes to credits available between April 1, 2021 and September 30, 2021. It expands the reasons for which credit-eligible paid sick and family leave may be taken to include:

- Awaiting the results of a COVID-19 test or diagnosis if the employee was exposed to COVID or the employer requested a test or diagnosis
- Obtaining the COVID-19 vaccine
- Recovering from the COVID-19 immunization

Under the FFCRA, paid family leave was available only to care for a child whose school was closed or caregiver was unavailable due to COVID-19. The ARPA expands the reasons that paid family leave may be taken — and will be credit-eligible — to include all of the reasons that paid sick leave can be used. It also expands eligibility for the FFCRA tax credit to state and local governments as well as federal governmental tax-exempt agencies.

> **Buck comment.** In light of these changes, businesses and other organizations should carefully evaluate the potential benefits of offering FFCRA leave after April 1 and assess what changes may be needed to leave policies and employee handbooks to accommodate it.

Sick leave credits

The ARPA enlarged employees' FFCRA paid sick leave banks, resetting the 10-day allotment starting April 1, 2021. It allows employers to receive a tax credit even if they took a credit for paid sick leave earlier. The tax credit is based on the employee's regular rate of pay capped at $511 per day if the leave is for one of the new reasons related to immunization or testing or for the employee's own symptoms, quarantine, or isolation. The credit available for any other qualifying reason is limited to two-thirds of the employee's regular rate of pay, capped at $200 a day.

Family leave credits

The ARPA also increases the maximum per-employee tax credit for qualified paid family leave from $10,000 to $12,000. Because the first two weeks of paid family leave no longer need to be unpaid, employers may be eligible to receive a tax credit for up to a total of 12 weeks. The available credit is still limited to two-thirds of the employee's regular rate of pay, capped at $200 per day for all qualifying reasons for paid family leave.

The ARPA bars employers from receiving credits in any calendar quarter that they favor highly compensated employees (within the meaning of Section 414(q) of the Internal Revenue Code), full-time employees, or employees based on tenure in providing paid sick or family leave. Because the prohibition applies separately to paid sick and paid family wages, employers may choose to pay only paid sick or family leave wages and receive the applicable tax credit.

Paycheck Protection Program

Established by the CARES Act, the Paycheck Protection Program (PPP) provides short-term forgivable loans to help small businesses maintain their payroll, rehire, and cover overhead during the COVID-19 crisis. PPP loans can fund up to eight weeks of payroll expenses (including benefits) and can also be used to pay interest on mortgages, rent, and utilities. The CAA amended the PPP to expand the permitted uses of PPP loan proceeds, extend loan application deadlines, and make it easier for loan recipients to qualify for forgiveness. (See our January 21, 2021 *FYI*.)

The ARPA renews and expands the program's eligibility rules, along with providing an additional $7.25 billion in lending authority. While it does not extend the PPP's current application period beyond its current end date of March 31, 2021, it does expand loan eligibility to additional non-profit entities (including groups that engage in advocacy and some limited lobbying) as well as to larger non-profit organizations. Among the newly loan-eligible organizations are:

- 501(c)(3) organizations and veterans' organizations with no more than 500 employees per physical location
- 501(c)(5) labor organizations
- 501(c)(6) organizations, domestic marketing organizations, and additional covered non-profit entities that employ no more than 300 employees per physical location
- 501(c)(7) social and recreation clubs
- 501(c)(8) fraternal benefit societies
- Online news publishers that employ no more than 500 employees per physical location

The ARPA also expands PPP loan forgiveness for additional expenses, including COBRA premium payments on forgiveness applications after March 11, 2021.

> **Buck comment.** On March 16, the House passed HR 1799, the PPP Extension Act by a vote of 415-3. If, as expected, the Senate approves the bill, it would extend the deadline for PPP loan applications by two months (or through May 31) and the SBA's authority to guarantee and process those applications through June 30.

Revised and expanded retention tax credit

The CARES Act established a refundable employee retention tax credit for businesses that continued paying their employees when business operations were either fully or partially closed by a lockdown order or whose gross receipts for any quarter in 2020 were less than 50% of gross receipts for the same quarter in 2019. The credit equaled 50% of the qualified wages paid to the employee plus the cost to continue providing their health benefits, capped at $5,000 for all qualified wages paid during 2020.

The CAA extended the retention tax credit availability through June 30, 2021, and increased the credit amount to 70% of qualified wages (including the cost to continue health benefits) paid to employees after December 31, 2020, and before July 1, 2021. It also increased the maximum tax credit that can be claimed to $7,000 per employee per calendar quarter for each of the first two quarters of 2021. The maximum credit is available even if the employer received the maximum credit for wages paid to the employee in 2020.

The ARPA extends the employee retention credit through the end of 2021 and expands eligibility to start-up companies and other businesses especially hard hit by the pandemic, effective for calendar quarters after June 30, 2021. Start-ups that were established after February 15, 2020, with annual gross receipts of up to $1 million that do not otherwise meet the credit eligibility tests and "severely financially distressed employers" (companies whose revenue declined by 90% compared to the same calendar quarter of the previous year) would be eligible. For start-ups, the credit would be capped at $50,000 per calendar quarter.

Expanded scope of Sec. 162(m) deduction limitation on executive compensation

Section 162(m) of the Internal Revenue Code prohibits a publicly held corporation from deducting more than $1 million in compensation paid to certain highly compensated employees in a taxable year. Currently, the limit applies to the company's chief executive officer (CEO), chief financial officer (CFO), and the three other highest compensated officers for the taxable year. Notably, an employee who meets these coverage criteria in any taxable year is treated as a covered employee for all subsequent years, even if they no longer satisfy the criteria. Because the limit extends post-employment, payments from a nonqualified plan would be subject to it. This has implications for program design.

The ARPA modifies Section 162(m) to double the number of employees covered by the deduction limit, effective for any taxable year beginning after December 31, 2026. Beginning in 2027, the $1 million cap on deductible compensation will apply to the CEO, CFO, and three other highest compensated officers plus the company's next five highest compensated employees in that year. However, the additional group of five employees will be determined each year and will not be permanently treated as covered employees.

In closing

The latest coronavirus relief package provides new opportunities and continuing support for organizations to maintain payroll, rehire, and cover overhead even as the COVID crisis begins to wane and states reopen. It builds on earlier legislation expanding unemployment benefits, increasing aid to small businesses, and extending tax credits to offset employment-related costs. Employers should review these changes and determine their impact, if any, on their operations. As with all new legislation, additional guidance will be necessary. We'll continue to monitor developments and keep you informed.

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