

American Rescue Plan Act of 2021

The American Rescue Plan Act of 2021 (ARPA) was signed into law by President Biden on March 11, 2021, with several provisions to take effect on April 1, 2021. Below are the highlights for employers.

Extension of Federal Pandemic Unemployment Assistance and Pandemic Emergency Unemployment Compensation

- Provides benefits of \$300/week through Sept. 6, 2021
- Increases the total number of weeks from 50 weeks to 79 weeks for individuals who do not qualify for regular benefits
- Continues eligibility for individuals who may not qualify for state unemployment benefits (e.g., self-employed, gig workers and others in non-traditional employment)
- Extends CARES Act benefits until Sept. 6, 2021, to individuals who have exhausted benefits — increasing benefits period from 24 weeks to 53 weeks

Extension of Federal Pandemic Unemployment Assistance and Pandemic Emergency Unemployment Compensation

- Extends through Sept. 6, 2021, federal payments for a portion of unemployment costs
- Increases federal payments to nonprofits and government agencies from 50% to 75% after March 31, 2021, through Sept. 6, 2021

Family Sick Leave Tax Credit Extension

The Families First Coronavirus Response Act (FFCRA) required employers with fewer than 500 employees to provide COVID-19-related paid family leave and paid sick leave and established corresponding tax credits. The employer mandate expired on Dec. 31, 2020, and, since January 2021, covered employers have not been required to provide FFCRA leave to employees. Employers who voluntarily chose to provide FFCRA leave to employees could obtain tax credits to offset certain costs associated with providing the leave. The ARPA did not reinstate the mandate to provide leave or require employers to provide any additional leave, but extended the tax credits for qualifying family leave and sick leave wages that an employer voluntarily pays between April 1, 2021, and Sept. 30, 2021.

Note: Some states have adopted paid sick leave and paid leave mandates.

Additional Changes Pertaining to Federal Paid Family Sick Leave and Tax Credits:

- Increases the number of days of paid leave from 50 days to 60 days
- Increases covered wages from \$10,000 to \$12,000 per employee
- Expands the tax credits to cover leave provided to employees for COVID-19 vaccinations or wait times for test results or diagnoses
- Adds anti-discrimination provision limiting tax credit if employers' paid leave policies favor highly compensated employees, full-time workers or employees based on tenure

COBRA Continuation Coverage

- Subsidizes 100% of premiums for eligible COBRA recipients for continuation coverage in the event of involuntary termination or a reduction of hours
- Employers can claim a refundable tax credit against their Medicare payroll tax liability for the cost of the premiums
- The assistance is available through Sept. 30, 2021, but is no longer available once an individual becomes eligible for coverage under another group health plan, flexible spending arrangement, a qualified small employer health reimbursement arrangement or Medicare
- The legislation also includes specific requirements for employers to update COBRA notices or send a separate notice describing the new subsidies (and the key terms) to all eligible individuals. Failure to provide such notice will be treated as a failure of the COBRA notice requirements. Federal agencies are directed to provide model notices for these purposes within 30 to 45 days of enactment.

Increased Limit on Employer-Provided Dependent Care Flexible Spending Accounts

Raises the 2021 contribution limit for Dependent Care Flexible Spending Accounts (FSAs) to \$10,500 for single taxpayers and to \$5,250 for married employees filing separately (or single filer).

Modification to the Paycheck Protection Program

- Adds \$7.25 billion for Paycheck Protection Program
- Maintains eligibility for 501(c)(3) and 501(c)(6) organizations
- Expands eligibility to additional 501(c) organizations, including labor organizations, social clubs and fraternal benefit societies
- Permits recipients of Shuttered Venue Operator Grants (SVOG) to apply for a second PPP loan

Industry-Focused Grants

Provides additional government aid for qualifying businesses in certain industries for eligible expenses. For example, the Restaurant Revitalization Fund offers grants to eligible business to be used for permissible expenses such as payroll costs, paid sick leave, mortgage/rent payments and more.

Employee Retention Tax Credit

- Extends the CARES Act's employee retention credit through Dec. 31, 2021
Note: There are different rules for employers under each previous version of the credit, specifically wages paid through Dec. 31, 2020, under the March 2020 CARES Act, wages paid in the first half of 2021 under the December 2020 Taxpayer Certainty and Disaster Tax Relief Act and wages paid in the second half of 2021 under the ARPA.
- Expands eligibility for the credit to new "recovery start-up businesses" that were established after Feb. 15, 2020, and meet certain additional criteria

In light of the above, we recommend the following action items and are here to assist as needed:

1. Monitor federal DOL news releases for the new model COBRA notices and update your COBRA notices accordingly
2. Review the names of COBRA-qualified beneficiaries who had a qualifying event in 2020 in order to send the proper notice to anyone who is eligible for COBRA during the six-month subsidy period
3. Determine your company's position with respect to paid sick leave and paid family leave for employees until Sept. 30, 2021, and update posters/forms/policies to include additional qualifying reasons
4. Consult with tax professionals and tax attorneys to review employee retention tax credit

If you wish to further discuss these updates or have any questions, please contact Swift Currie employment attorneys:

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The foregoing is not intended to be a comprehensive analysis of the full effect of these changes. Nothing in this notice should be construed as legal advice. This document is intended only to notify our clients and other interested parties about important recent developments. Every effort has been made to ascertain the accuracy of the information contained within this notice.