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The American Rescue Plan: Employer Takeaways

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President Biden signed the American Rescue Plan Act of 2021 ("ARPA") into law on March 11, 2021. Provided here is an overview of the key features that affect employers.

COBRA Subsidy

In general, upon the loss of employer-sponsored health insurance benefits, the Consolidated Omnibus Budget Reconciliation Act ("COBRA") allows eligible employees to continue such benefits for up to 18 months at their own expense, meaning employees are typically responsible for the entirety of the premium amount plus an additional 2 percent administrative fee.

ARPA seeks to assist employees who are involuntarily terminated or suffer a reduction in work hours resulting in a loss of coverage ("assistance eligible individuals"). Between April 1, 2021 and September 30, 2021, employers must subsidize 100 percent of the COBRA continuation coverage of any assistance eligible individuals who complete COBRA enrollment. Employers will later be reimbursed by the federal government through tax credits against their quarterly payroll taxes. Employees who voluntarily left employment, were terminated for gross misconduct, or became eligible for other group health insurance coverage or Medicare are not eligible for the subsidized coverage.

Employers have an obligation to notify assistance eligible individuals regarding the subsidized coverage. Individuals who discontinued or previously declined their continuation coverage must receive this notice by May 31, 2021. Individuals whose COBRA election period expired prior to April 1, 2021 have an additional 60 days from the receipt of their notice to elect coverage, even if they previously discontinued or declined COBRA coverage. Employers are also responsible for giving individuals between 15 and 45 days' notice of the pending expiration of their COBRA subsidy and coverage. Employers that fail to provide the required notices may be subject to an excise tax of up to $200 per ex-employee per day of noncompliance. The Department of Labor has issued model notices to aid employers with these requirements.

Voluntary Paid Sick and Family Leave Tax Credit

ARPA also extends and expands the availability of refundable payroll tax credits to covered employers (i.e., employers with 500 or fewer employees) that *voluntarily* provide employees with paid leave for qualified reasons.

Under the ARPA, employers may voluntarily provide an employee up to 80 hours of Emergency Paid Sick Leave ("EPSL"), between April 1 and September 30, 2021, if the employee is:

1. Subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. Seeking or awaiting the results of a COVID-19 diagnostic test because of exposure to COVID-19 and/or because of Company requested testing;
5. Obtaining immunization related to COVID-19;
6. Recovering from any injury, disability, illness, or condition as a result of obtaining immunization related to COVID-19;
7. Caring for an individual subject to a quarantine or isolation order or advised to self-quarantine due to concerns related to COVID-19;
8. Caring for a son or daughter whose school or childcare provider is closed or unavailable due to COVID-19 precautions;
9. Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor.

Paid leave for reasons 1, 2, 3, 4, 5, and 6, above, is paid at the employee's regular rate of pay, capped at $511/day. Paid leave for reasons 7, 8, and 9, above, is paid at a rate equivalent to two-thirds of an employee's regular rate of pay or minimum wage, whichever is greater, capped at $200/day.

Also under the ARPA, employers may provide up to twelve weeks of Emergency Family Medical Leave ("EFML") leave for *any* of the above-stated reasons. This leave is paid at a rate equivalent to two-thirds of an employee's regular rate of pay or minimum wage, whichever is greater, capped at $200/day and $12,000 in total.

Employers that plan on *voluntarily* providing EPSL and/or EFML leave will only be eligible for the applicable tax credits if they provide leave in a non-discriminatory manner. This means employers should not favor full-time, highly compensated, or seniority employees.

It is important to note that the Department of Labor has not yet issued guidance on the implementation and administration of ARPA.

Employee Retention Credits

ARPA further encourages employers to keep employees on their payroll through employee retention credits ("ERCs"). ERCs provide employers a refundable tax credit against social security taxes for 50 percent of the qualified wages paid to their employees. An employee's wages are considered qualified if the employer keeps the employee on payroll while its (1) operations are fully or partially suspended due to a COVID-19 related shutdown order; or (2) gross receipts in the calendar quarter are less than 50 percent of the gross receipts from the same quarter in 2019. The tax credits are capped at $7,000 per employee per quarter and $14,000 per employee for 2021.

Additional relief is available for "recovery startup businesses." Under ARPA, a recovery startup business is one that started its operations after February 15, 2020 and has average annual gross receipts that do not exceed $1,000,000. Instead of receiving the ERCs, these employers can receive a tax credit of up to $50,000 per quarter for all employees through the end of 2021.

Bodman's Workplace Law Group is available to answer any specific questions related to ARPA and can provide assistance completing model COBRA notices and claiming any of the above-referenced tax credits. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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