What Employers and HR Professionals Need to Know about the American Rescue Plan Act

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On March 10, 2021, Congress passed the American Rescue Plan Act of 2021 (ARPA or the Act). President Biden signed the bill into law on March 11, 2021. ARPA provides $1.9 trillion in relief to employers, individuals, and state and local governments related to the COVID-19 pandemic. Following is a brief review of the employment-related provisions included in the Act:

Unemployment Compensation Provisions

ARPA extends certain unemployment benefits previously granted under the March 2020 CARES Act (CARES Act) and the December 2020 Consolidated Appropriations Act (CAA). Previously, under the Cares Act and CAA, Congress created and then extended three programs of new and/or expanded unemployment benefits: (1) Federal Pandemic Unemployment Compensation (FPUC), which provided an additional $300 weekly unemployment benefit; (2) Pandemic Emergency Unemployment Compensation (PEUC), which provided 24 additional weeks of unemployment benefits for those who had exhausted state unemployment benefits; and (3) Pandemic Unemployment Assistance (PUA), which provided federally-funded benefits for workers who would not normally be eligible for state unemployment compensation (e.g., independent contractors and self-employed workers). Absent the extensions provided by ARPA, these programs were set to expire on March 14, 2021.

ARPA extends and revises FPUC, PEUC, and PUA through September 6, 2021, as follows:

- FPUC: The $300 supplemental weekly benefit is extended to September 6, 2021.

- PEUC: Most states cap unemployment benefits at 26 weeks. The CARES Act provided an additional 13 weeks, and the CAA increased that to 24 additional weeks. ARPA has now extended PEUC to 53 weeks, which means that eligible recipients of unemployment benefits can potentially receive up to 79 weeks of benefits (26 weeks from the state plus 53 ARPA weeks).

- PUA: The CARES Act provided up to 39 weeks of PUA unemployment benefits. That was extended to 50 weeks under the CAA, and has now been extended to 79 weeks by ARPA.

These programs are fully funded by the federal government. Thus, even though ARPA has extended them through September 6, 2021, employers will still not be responsible for this cost.

Extension of FFCRA Tax Credit

The Families First Coronavirus Response Act (FFCRA) required employers with fewer than 500 employees to provide Emergency Paid Sick Leave (EPSL) and Emergency Family Medical Leave (EFML) for certain COVID-related reasons through December 31, 2020, and established corresponding tax credits to reimburse employers for such paid leave. The leave mandate expired on December 31, 2020. In December 2020, the CAA extended the tax credits through March 31, 2021 for employers covered by the FFCRA who voluntarily continued to provide FFCRA leave to employees.

ARPA now extends those tax credits through September 30, 2021 for employers covered by the FFCRA who voluntarily continue to provide FFCRA leave through that date. Like CAA, ARPA does not extend the leave mandate beyond December 31, 2020.

FFCRA Revisions

ARPA also made the following modifications to the FFCRA, effective April 1, 2021:

- ***Reasons for FFCRA Leave Expanded***: In addition to the reasons originally set forth in the FFCRA, employers will receive tax credits for voluntarily providing paid leave to employees from April 1, 2021 through September 30, 2021 for: (i) obtaining an immunization related to COVID-19 or recovering from any injury, disability, illness or condition related to such immunization; or (ii) seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19, when such employee has been exposed to COVID-19 or the employer has requested such test or diagnosis.

- ***Resets the Clock for EPSL***: Regardless of whether employees used their full measure of EPSL prior to April 1, 2021, the EPSL slate is wiped clean as of March 31, 2021, and ARPA provides employees with 10 days of EPSL to use beginning on April 1, 2021. Employers who voluntarily allow employees to use these EPSL days would be eligible for a tax credit to reimburse the cost of the paid leave.

- ***Expansion of EFML***: As of April 1, 2021, ARPA removes the two-week waiting period for EFML, thus raising the aggregate cap on EFML from $10,000 to $12,000 and the potential number of days of EFML from 50 to 60. Even more significantly, as of April 1, 2021, employees will qualify for EFML not only for leave to care for a child whose school or child care was closed due to the pandemic, but also for any of the reasons for which an employee can take EPSL, which includes the two new reasons provided by ARPA described above.

- ***Non-Discrimination***: ARPA adds a new rule disallowing tax credits for employers who voluntarily provide FFCRA leave but who discriminate with regard to such leave on the basis of employment tenure or in favor of full-time employees or highly compensated employees (as defined in Section 414(q) of the Internal Revenue Code).

ARPA directs the U.S. Department of Labor to issue guidance or regulations regarding these ARPA changes, so additional information and clarification regarding these changes should be forthcoming. Employers are reminded that the extension of these expanded FFCRA eligibility opportunities are no longer mandatory. ARPA simply extends the opportunity for tax credits as reimbursement for employers who elect to provide such paid leave benefits.

Vorys COVID-19 Task Force

Vorys is continuing to monitor developments in this area and will continue to provide updates. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines in which we have been and expect to continue receiving questions. Learn more and see the latest updates from the Task Force. If you have questions regarding this news, please contact your Vorys attorney or a member of our Coronavirus Task Force.