The Employer's Life Vest for the American Rescue Plan

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What you may have heard: The American Rescue Plan Act (ARPA), which was signed into law on March 11, 2021, cost $1.9 Trillion. It will deliver payments of $1,400 to individuals, $2,800 to married couples, and $1,400 for each dependent.

What you need to know: Besides offering aid to individuals and families, the ARPA brings aid and obligations to public and private employers. Building on previously enacted aid measures from 2020 (i.e., the Coronavirus Aid, Relief, and Economic Security (CARES) Act; the Families First Coronavirus Response Act (FFCRA); and the Consolidated Appropriations Act (CAA)), the ARPA contains key provisions that benefit businesses and employees by, among other things, expanding leave availability, incentivizing and enabling employee retention, and providing direct aid for business operations.

(1) Paid Leave

Employers may provide additional paid sick and family leave for illness, quarantine, and caregiving. Following the December 31, 2020 expiration of the FFCRA's paid sick and family leave mandate, employers could voluntarily provide such leave, and receive refundable tax credits, through March 31, 2021. The ARPA expands these voluntary FFCRA offerings and makes corresponding tax credits available through September 30, 2021.

(a) Sick leave

Employers can offer, and receive tax credit, for up to 10 days of paid sick leave, beginning April 1, 2021. These days are separate from, and in addition to, the paid sick leave provided for a covered reason prior to April 1, 2021. In other words, if an employee previously took 10 paid sick days due to a COVID-related quarantine, the employee can take another 10 paid days for a covered reason.

The list of six reasons for paid sick leave covered under the FFCRA has been expanded to nine. The newest three reasons include the following: (1) obtaining a COVID-19 immunization shot; (2) recovering from an injury, disability, illness or condition related to the immunization; and (3) seeking or awaiting the result of a COVID-19 test or diagnosis when the employee has either been exposed to COVID-19 or the employer has requested the test or diagnosis.

Previously, employers that provided voluntary paid sick leave would receive a tax credit, of up to $511 a day, at the employee's regular rate of pay if the employee was on leave due to coronavirus quarantine, self-quarantine, or had symptoms. The ARPA now includes three additional covered reasons for receiving tax credits at the employee's regular rate of pay. For any other paid sick leave reason, the amount of tax credit available to an employer is calculated at two-thirds the employee's regular rate of pay and capped at $200 a day.

(b) Family leave

Employers can offer, and receive tax credit, for up to 12 weeks of paid family leave, beginning April 1, 2021.

The list of qualifying reasons for emergency family leave under the FFCRA has been expanded. Previously, tax credits were available to employers who provided family leave if an employee was unable to work or telework due to the need to care for a child whose school or place of care was closed or unavailable because of a public health emergency. Presently, employers can claim tax credits for providing family leave for any of the nine qualifying reasons for paid sick leave (i.e., the six qualifying reasons under the FFCRA and the three reasons added under the ARPA).

Formerly, employers that provided paid family leave received a tax credit, of up to $200 a day, at two-thirds the employee's regular rate of pay for family leave due to a covered reason. The ARPA removes the FFCRA's unpaid, two-week waiting period for taking paid emergency family leave. The ARPA also increases the cap on the aggregate paid leave from $10,000 to $12,000 per employee.

Employers may not discriminate in administering either form of paid leave. A new rule bars tax credit for any employer that discriminates in favor of highly compensated employees, full-time employees, or on the basis of the employment tenure in providing paid leave.

(2) Employee Retention Credit

The employee retention credit (ERC) introduced under the CARES Act helped incentivize employers to keep their employees on payroll by offering refundable tax credit based on the amount of qualified wages paid to certain employees.

Under the CARES Act, eligible employers could claim credit against 50% of qualified wages paid between March 13 and December 31, 2020, up to $10,000 per employee annually. Subsequently, the CAA permitted eligible employers to claim credit against 70% of qualified wages paid up to $10,000 per employee per quarter for the first two quarters of 2021.

The ARPA extends the availability of the ERC from June 30, 2021 to December 31, 2021. It also permits eligible employers to claim credit against 70% of qualified wages up to $10,000 per quarter, such that up to $28,000 could be claimed for 2021. In addition, the ARPA expands employer eligibility to include (1) a recovery startup business (a company that began carrying on a trade or business after February 15, 2020, has average annual gross receipts of up to $1 million, and is otherwise ineligible under the eligibility test); and (2) severely financially distressed employers (businesses with gross receipt reductions of more than 90% as compared to the same quarter in 2019).

(3) COBRA Subsidy

The Consolidated Omnibus Budget Reconciliation Act (COBRA) allows employees to continue coverage under their employer's health insurance for up to 18 months after coverage is lost because of a reduction in work hours or the employee's involuntary termination. Employees were fully responsible for premium payment.

Beginning April 1, 2021, the ARPA provides up to six months of 100% subsidized COBRA coverage to eligible COBRA recipients. The premium subsidy extends through September 30, 2021, and employers will receive reimbursements for the subsidy through a payroll tax credit. The subsidy does not extend an employee's maximum period of COBRA coverage, but it does allow for qualified employees to retain COBRA coverage at no cost during the subsidy period. Employers have an obligation to notify impacted employees of the ARPA's COBRA provisions.

(4) Restaurant Revitalization Grants

The ARPA establishes $28.6 billion in a Restaurant Revitalization Fund for 2021 to be administered by the Small Business Administration (SBA). An eligible entity can receive a grant that is equal to the amount of the pandemic-related revenue loss of the entity, which is defined as the gross receipts of the eligible entity during 2020 subtracted from the gross receipts of the eligible entity in 2019. There is a cap of $5 million per location and an aggregate cap of $10 million.

Eligible entities include an expansive list, including restaurants, food stands, food trucks, food carts, caterers, saloons, inns, taverns, bars, lounges, brewpubs, tasting rooms, taprooms, certain breweries, wineries, distilleries or other similar places of business in which the public or patrons assemble for the primary purpose of being served food or drink. Five billion dollars of the fund will be allocated to restaurants whose gross receipts in 2019 were less than $500,000, and the first 21 days of the program prioritizes small businesses owned by women, veterans, or socially and economically disadvantaged individuals.

Grant amounts may be used to cover payroll costs, mortgage payments, rent, utilities, food and beverage expenses, covered supplier costs, maintenance expenses, operational expenses, paid sick leave, and supplies. Grant amounts received from the restaurant revitalization fund will not be treated as taxable income, and expenditures paid with such grant amounts will still be deductible.

(5) Short-time Compensation

Short-time compensation (STC) programs allow employers to avoid employee layoffs by implementing a reduction in hours. Those workers whose hours are reduced may receive prorated unemployment benefits.

The CARES Act permitted states to receive 100% reimbursement from the federal government for unemployment benefits paid under STC programs, until July 1, 2021. The ARPA extends the reimbursement to September 6, 2021. Presently, 27 states have qualifying STC programs, including New Jersey, Massachusetts, New York, and Pennsylvania.

(6) Paycheck Protection Program (PPP)

The ARPA modifies the PPP to clarify that the Small Business Administration affiliation rules will not apply to certain applicants. Specifically, 501(c)(3) organizations that employ not more than 500 employees per physical location of the organization are eligible for the program. The law also provides an additional $7.25 billion for the program. The PPP's current application deadline of March 31, 2021, was not extended.

What you know now: The ARPA is a robust piece of legislation that seems to have something for everyone. It is our intention to ensure that businesses have a clear understanding of what the new law has for them: additional time, additional funds, and additional ways to support and maintain the employees that will keep business going strong throughout the pandemic.