

LABOR RELATIONS

Expert Analysis

Important Legislative Updates: The ARPA and New York State Vaccine Leave

The sweeping American Rescue Plan Act of 2021 (ARPA) covers several employment-related topics. In addition to extending certain items that may be familiar to employers, including leave-related tax credits and unemployment insurance benefits, the ARPA includes new items such as a premium subsidy under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and an appropriation of funds to the U.S. Department of Labor, signaling a shift in enforcement efforts. Employers should be aware of the ARPA's key employment-related provisions to both ensure compliance and reap the ARPA's benefits. Employers should also stay current on developing state action such

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as in New York state's recently enacted paid vaccine leave law.

COBRA Premium Subsidies

The ARPA creates a 100% COBRA premium subsidy for up to six months for assistance-eligible individuals (AEIs). AEIs are those COBRA qualified beneficiaries who are eligible for continuation coverage through Sept. 30, 2021, who experience a COBRA qualifying event due to involuntary loss of employment or reduction of hours, and who elect COBRA continuation coverage. The ARPA also extends the COBRA election period and grants a second opportunity to

elect COBRA continuation coverage for those qualified individuals who would be AEIs but who never elected COBRA continuation coverage, or who previously discontinued their COBRA continuation coverage. All three criteria must be satisfied.

The ARPA requires the administrator of the applicable group health plan (or other entity) to send additional COBRA notifications regarding the premium subsidy and extension, as applicable, to those individuals who were eligible for COBRA continuation coverage prior to April 1, 2021, by May 31, 2021. Depending on plan design, plan administrators will need to identify AEIs who became eligible for COBRA coverage due to involuntary loss of employment or reduction of hours on or after Nov. 1, 2019.

Under the ARPA, AEIs will be treated for purposes of any COBRA continuation provision as

having paid in full the amount of such COBRA premium. Employers will receive a payroll tax credit for this premium subsidy. As a result, the employer is made whole for providing the subsidy.

Tax Credits for Paid Sick Leave And Paid Family Leave

The Families First Coronavirus Response Act (FFCRA) which expired on Dec. 31, 2020, required certain employers to provide paid sick leave or expanded paid family leave for reasons related to COVID-19. The FFCRA then allowed employers to receive payroll tax credit for certain wages paid by employers during this leave. Section 286 of the Consolidated Appropriations Act of 2021 (CCA) extended this payroll tax credit from Jan. 1, 2021 to March 31, 2021 for those employers who voluntarily offered such leave. The ARPA further extends this payroll tax credit from April 1, 2021 to Sept. 30, 2021 for certain payroll tax credits for qualifying employers who, as under §286 of the CCA, voluntarily provide emergency paid sick leave or expanded family and medical leave to employees. As with the FFCRA and §286 of the CCA, the ARPA allows for 100% of the qualified sick leave wages or qualified

family leave wages paid by each employer to be credited against the employer's employment taxes for such calendar quarter. In addition, the ARPA expands the FFCRA's list of qualifying reasons for paid sick leave to include leave for an employee (1) seeking or awaiting the results of a diagnostic test for, or medical diagnosis of, COVID-19 after exposure to COVID-19 or at the employer's request; (2) obtaining immunization related to COVID-19 or (3)

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recovering from any injury, disability, illness or condition related to such immunization.

Aid for Federal Contractors

Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act reimburses federal contractors for paid leave provided to certain employees or subcontractors who are unable to work for the federal contractor due to pandemic related facility closures or other restrictions. The ARPA extends §3610 of the CARES Act. This extension will

apply until Sept. 30, 2021, after it was initially extended through March 31, 2020, by the CCA.

Aid for Small Businesses and Transportation

The ARPA appropriates additional funds for small businesses, including those that have experienced unique difficulties during the pandemic. It expands the paycheck protection program and it establishes a restaurant revitalization fund, a community navigator pilot program aimed at assisting businesses owned by economically and socially disadvantaged groups, and provides aid to shuttered venues. In addition, the ARPA extends certain support for air workers under the CARES Act and the CAA and provides additional relief for public transportation organizations.

Extension of Unemployment Assistance

The ARPA also expands and extends four significant unemployment insurance programs created by the CARES Act or by the CAA. First, the Pandemic Emergency Unemployment Compensation (PEUC) program, which provides benefits for individuals who have otherwise exhausted state unemployment benefits,

would have expired on March 14, 2021. It has been extended until Sept. 6, 2021. The number of eligibility weeks has increased from 24 weeks to 53 weeks. Second, the Pandemic Unemployment Assistance (PUA) program, which provides an extension of unemployment benefits to self-employed individuals and others ineligible for state unemployment benefits, would have expired on March 14, 2021. It has been extended to Sept. 6, 2021. The number of eligibility weeks has increased from 50 to 79 weeks. Third, the Federal Pandemic Unemployment Compensation (FPUC) program supplement of \$300 per week, which was also set to expire on March 14, 2021, has been extended through Sept. 6, 2021. Lastly, the Mixed Earner Unemployment Compensation program, providing certain individuals who are both W-2 employees and self-employed with an additional \$100 per week, has been extended through Sept. 6, 2021.

Aid for DOL Enforcement

Marking a shift in tone on enforcement, §2101 of the ARPA appropriates to the U.S. Department of Labor (DOL) \$200 million dollars for the Wage and Hour

Division, the Officer of Workers' Compensation Programs, the Office of the Solicitor, the Mine Safety and Health Administration and the Occupational Safety and Health Administration. This appropriation will pay for COVID-19 related worker protection activities and for oversight of the Secretary of Labor's activities to prevent, prepare for and respond to COVID-19. Of the amount appropriated, the DOL must spend not less than \$5 million dollars for enforcement activities related to COVID-19 at high risk workplaces including healthcare, meat and poultry processing facilities, agricultural workplaces and correctional facilities.

New York State Law Providing Vaccine Leave

New York recently passed legislation giving employees paid leave to secure a COVID-19 vaccine. (Other states have enacted similar laws or issued local guidance.) The new New York law, in effect from March 12, 2021 to Dec. 31, 2022, grants all employees up to four hours of paid leave per vaccine. Accordingly, if an employee requires two shots, he or she will be authorized to take up to eight hours of paid

time off. Further, the qualifying employee must be paid at his or her regular rate of pay, and cannot be required to use any other available leave before using the newly mandated leave.

Concluding Thoughts

A year into the pandemic, employment-related legislation continues at both a federal and state level. Importantly, the ARPA not only provides an expansion of pandemic-related assistance, but also signifies a shift in DOL oversight of working conditions. Employers should be aware of the ARPA's employment-related provisions and also be mindful of the DOL initiatives funded by the ARPA as well as state law developments.