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WHAT THE NEWEST COVID RELIEF BILL MEANS FOR EMPLOYERS

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As the Covid Pandemic passes the one-year mark, President Biden has signed a third Covid stimulus bill into law. The American Rescue Plan Act (ARPA) is designed to stimulate the economy through a variety of monetary distributions, policies, and tax mechanisms. With that in mind, we will discuss the provisions of this new law which should prove most relevant to employers.

Paid Sick Leave

ARPA's biggest change for sick leave will apply only to federal workers, who will receive up to fifteen weeks of sick leave. Private sector employers can continue to extend the sick leave provisions of last year's Families First Coronavirus Response Act (FFCRA) but are not required to do so. President Biden had previously expressed his intention to include expansive new Covid leave provisions in this stimulus bill. An earlier version of the bill making its way through the House of Representatives not only replicated the leave provisions of last year's FFCRA, but drastically expanded upon that law. The main thrust of the proposed change was to increase leave time, reset leave entitlements for employees, and eliminate nearly all of the exempted employer categories included in the FFCRA.

Ultimately, most of those proposed leave provisions were eliminated in the version of the bill that passed the House. Instead, employers will have the option of continuing to offer leave under terms similar to the FFCRA until October 1, 2021. This outcome provides employers with flexibility to continue offering paid leave, but no mandate to do so.

There are a few key differences between ARPA's and the FFCRA's treatment of leave. ARPA retains all of the qualifying reasons for leave which were created under the FFCRA and adds three new qualifying reasons for leave. An employer can now offer leave for employees who are seeking or receiving a Covid vaccination, recovering from a Covid-related illness, or is seeking or waiting for the results of a Covid test, either voluntarily or at the Employer's request.

One significant change is that for employers who continue offering Covid sick leave, the leave entitlement limits of the FFCRA will now reset on April 1, 2021. An employee who was exhausted their leave entitlement under the FFCRA or its December extension can have a completely new bank of leave entitlement. Employers who continue to offer emergency sick leave and expanded family and medical leave will be reimbursed for the costs of paid leave through a refundable tax credit against an employer's quarterly employment taxes, just as they were under the FFCRA.

Lastly, ARPA adds a non-discrimination provision which would deny the tax credit to an employer who offered leave if they have determined eligibility for leave in a manner which discriminates against highly compensated employees, full time employees, or on the basis of an employee's length of service. The goal of this change is to encourage employers to extend paid leave in a consistent manner across their work force.

No $15 Minimum Wage

Yet another major feature which did not make the final cut for ARPA was a push for a national $15 minimum wage. The wage proposal was designed to phase in over time, and contained exemptions for some employers, including small businesses. This provision was advocated by President Biden, amongst others. While the bill was making its way through the House, the Senate Parliamentarian stated that the wage provision could not be included in this stimulus. Even before the Parliamentarian weighed in, there were signals that the effort lacked the support it would need to pass the Senate. While it certainly is not the last we will hear of increasing the federal minimum wage, it was not included in ARPA.

Additional PPP

ARPA provides for another round of Payroll Protection Program (PPP) loans for eligible businesses. PPP loans were originally created by last year's CARES Act. PPP loans were loans to businesses to provide for continued payroll during the pandemic. If a recipient employer met the policy requirements the loans could be fully forgiven. The PPP provisions of the new law are very similar to those seen last year.

Help for Small Businesses and Specific Industries

Many small business owners believed the 2020 stimulus packages focused on saving larger industries while offering smaller businesses less help, despite the fact many small businesses operate with much smaller reserves and are more vulnerable to a rapid downturn in income.

The restaurant industry has been particularly hard-hit by the pandemic. ARPA has created a program which will offer $25 billion for restaurants and bars. This program will be administered by the Small Business Administration. Restaurants and bars will be able to apply for grants of up to $10 million, which they can use to for payroll and other operating expenses.

ARPA will also provide relief for the entertainment industry by providing additional funding for the Shuttered Venue Operators Grant (SVOG) program. This program was created by the December 2020 stimulus bill and provides grants to theaters, music venues, promoters, museums, performing arts venues, and similar businesses.

Another feature of ARPA designed to help small business is the Economic Injury Disaster Loan Advance Program (EIDL). The EIDL will also be administered by the Small Business Administration and makes $15 billion dollars' worth of loans available to businesses which experience a decline in their revenue due to the pandemic. This program grants priority for funding to very small businesses with fewer than 10 employees.

ARPA contains a number of other industry-specific relief efforts. For instance, ARPA authorizes $14 billion dollars of payroll support for the airline industry. As with the two previous stimulus packages, this money is intended to allow airlines and contractors to bring back or continue paying employees who were initially laid off or terminated when air travel plummeted early in the pandemic. Others include certain agricultural sectors and childcare providers.

COBRA and Unemployment

A number of provisions in ARPA are designed to help workers who have lost their jobs during the pandemic. Prior to ARPA, the federal government was providing an additional $300 per week for unemployment benefits, down from $600 per week earlier in the pandemic. Although the House sought to increase the benefit amount to $400, the Senate passed an extension of the $300 benefit through early September of 2021. A new feature is that the first $10,200 of unemployment income from 2020 will not be subject to federal taxes for households earning less than $150,000 per year.

Another new feature is COBRA assistance. COBRA allows employees to continue their employer-provided health insurance after certain qualifying events, such as termination or reduction in hours. Such coverage can be expensive, however, as individuals may have to pay 102% of their premiums to continue coverage. Under ARPA, the federal government will pay the entire COBRA premium for eligible employees from April 1 until September 30 of this year. Note that this feature applies only to individuals who become eligible for coverage through an involuntary separation – not for employees who voluntarily leave their jobs.

Pension Plans

ARPA contains provisions designed to aid both single payer and multiemployer pension plans. For single payer plans, these changes would allow for amortization of shortfalls as well as the use of higher interest rates in determining the value of plan liabilities. Normally, the applicable interest rate is limited by being linked to a historical 25-year average rage. Some of these provisions allow for retroactive application for 2019 and 2020. By changing these accounting measures, employers may be able to divert money from required pension contributions to invest in the business instead.

ARPA also contains measures to help multiemployer plans which are at risk of insolvency. Severely underfunded plans may be eligible for financial assistance without the need for repayment which would allow for the payment of all plan payment obligations through the plan year ending in 2051. ARPA seeks to accomplish this goal by creating a fund within the Pension Benefit Guaranty Corporation, which is the federal pension insurance program. The fund would then provide money to the severely underfunded pension funds to meet their payment needs, with no obligation for repayment. This program will only be available to funds which meet certain eligibility requirements.

The House's version of ARPA sought to offset some of the relief for multiemployer pension funds through an eventual freeze on the annual cost-of-living adjustments which increase the contribution limits for defined benefit plans such as 401(k) plans. The version which cleared the Senate eliminated that feature.

Employers should explore their options with respect to the various provisions of ARPA to determine how best to take advantage of the opportunities set forth in the new bill. The attorneys at McMahon Berger are available to answer any questions you may have.

The St. Louis employment attorneys at McMahon Berger have been representing employers across the country in labor and employment matters for over sixty years and are available to discuss these issues and others. As always, the foregoing is for informational purposes only and does not constitute legal advice regarding any particular situation as every situation must be evaluated on its own facts. The choice of a lawyer is an important decision and should not be based solely on advertisements.