American Rescue Plan Act of 2021: Focusing on Key Employment Provisions

March 22, 2021 | by Alex Lee

On March 11, 2021, President Joe Biden signed the American Rescue Plan Act of 2021 (the Plan), a $1.9 trillion COVID-19 relief bill, into law. The Plan includes extended and expanded provisions pertaining to unemployment insurance benefits and paid leave under the Families First Coronavirus Response Act (FFCRA) that broadly apply to many employers and employees.

Unemployment Insurance Extended

The Plan further extends the COVID-19 related expansions of unemployment first established under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and later extended in the December 2020 Consolidated Appropriations Act. This includes relevant programs under Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), the Pandemic Unemployment Assistance (PUA), and Mixed Earner Unemployment Compensation (MEUC).

These programs had previously established a series of expanded unemployment related benefits, including:

- A supplemental $600 (later revised to $300) weekly benefit under FPUC
- An extension of unemployment benefit eligibility for workers who have otherwise exhausted their eligibility for benefits under PEUC
- A broadening of eligibility for workers traditionally ineligible for unemployment benefits, including independent contractors, self-employed workers, gig-workers, and workers with a limited work history under PUA
- A supplemental $100 weekly benefit for workers with more than one source of income, including more than $5,000 in self-employment, under MEUC

The Plan extends each of the above programs until September 6, 2021. For instance:

- FPUC is still providing a supplemental $300 weekly benefit for workers who are eligible to receive state unemployment benefits
- PEUC continues to provide continued eligibility for workers who have otherwise exhausted unemployment eligibility
- PUA is allowing for those workers not traditionally eligible to collect unemployment insurance benefits to continue to remain eligible
- MEUC continues to provide a $100 weekly benefit

Additionally, the Plan provides for a tax waiver to offset the impact of uncertainties relating to the withholding of taxes for unemployment benefits. Households earning less than $150,000 in adjusted gross income in 2020 will receive the first $10,200 of unemployment benefits tax free for the 2020 tax year.

FFCRA Paid Sick Leave and Emergency Family Medical Leave Benefits Extended and Expanded

The Plan also extends tax credits to employers that wish to provide payroll tax credited paid leave for their employees from April 1, 2021 to September 30, 2021.

The FFCRA previously required employers with fewer than 500 employees to provide paid family leave and paid sick leave for qualifying reasons related to COVID-19. However, employers and employees should note that the FFCRA is no longer a mandatory requirement for employers following the expiration of those requirements on December 31, 2020. Under the December 2020 Consolidated Appropriations Act, the mandate to provide such leave was not extended, however, the payroll tax credits were extended through March 31, 2021 for employers that choose to voluntarily provide leave. Under the American Rescue Plan, the payroll tax credits that offset the employer costs of providing leave have again been extended from April 1, 2021 to September 30, 2021.

Additionally, the payroll tax credits provided under the FFCA have been further expanded under the Plan. In addition to the original qualifying reasons for paid sick leave under the FFCRA, employers may now receive tax credits for newly added reasons effective on April 1, 2021, including:

- Providing leave to employees who are seeking or awaiting the results of a diagnostic test for, or medical diagnosis of, COVID-19 when such employee has been exposed to COVID-19 or

the employer has requested such test or diagnosis
- When an employee is obtaining an immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to such immunization

Next, the Plan provides a new allotment of up to 80 hours (10 days) per employee for paid sick leave effective April 1, 2021, so that employers can draw on a new pool of credit even if employees have exhausted leave allotted prior to that date.

Based on the new provisions, employers seeking to receive these tax credits will have to adjust their leave policies accordingly. For paid sick leave, employers may receive a tax credit based on the employee's regular rate of pay for the newly provided reasons above, or for reasons relating to the employee's own symptoms, quarantine, or isolation for up to a cap of $511 per day. For all other reasons, the employer is limited to receiving a tax credit of up to 2/3 the employee's regular rate of pay up to $200 per day.

With respect to the Emergency FMLA under the FFCRA, and its provisions for paid family leave, the Plan eliminates the previously required two-week waiting period under Emergency FMLA and increases the total cap for tax credits employers can receive from $10,000 to $12,000 per employee, covering up to 12 weeks of leave at 2/3 the regular rate of pay up to $200 per day.

Under the Plan, paid family leave has been modified and broadly expanded to include the newly added qualifying reasons listed above in addition to all qualifying reasons that paid sick leave can be used. This includes circumstances when an employee is subject to quarantine or an isolation order, for a self-quarantine advisement from a health care provider, for experiencing symptoms of COVID-19 and seeking a medical diagnosis, for caring for an individual subject to quarantine or isolation order, or where an employee's child's school or child care is closed due to COVID-19.

Summary Takeaways

As we all continue to deal with the economic effects of the pandemic, employers and employees that are involved in personnel decisions involving layoffs or recalls should take into account the above changes to unemployment when making such decisions. Employers that choose to voluntarily provide paid sick or emergency family medical leave to their employees on a tax credited basis, should adjust their policies to reflect the above changes to the FFCRA.