

MEMORANDUM

DATE: March 23, 2021

RE: ARPA Update

With the increasing availability of vaccines and improved vaccination processes, there are reasons to be optimistic that we are beginning to turn the corner on this devastating pandemic. To assist in that effort Congress recently passed the American Rescue Plan Act (ARPA), which contains several employment-related provisions.

Key Components of the American Rescue Plan Act

Families First Coronavirus Response Act (FFCRA). Nearly a year ago to the day we wrote our first update about the pandemic-driven Families First Coronavirus Response Act (FFCRA). Many updates and acronyms later, we have yet another FFCRA-related update, this time courtesy of the American Rescue Plan Act of 2021 (ARPA).

Here are some of the main takeaways regarding the new provisions, which go into effect April 1, 2021:

- Starting April 1, employers with fewer than 500 employees may choose to grant employees FFCRA paid sick or family leave through September 30, 2021—ARPA does not require employers to provide paid sick or family leave.
- ARPA updates the definition of sick leave and family leave to also include leave taken for the purposes of (i) receiving a COVID-19 test or awaiting the results if the employee has been exposed or their employer has requested they get tested, (ii) receiving a COVID-19 vaccine, and (iii) recovering from vaccine side effects.
- Paid family leave can now be taken for all of the reasons that an employee can take paid sick leave, including the new reasons listed above. Until now, FFCRA family leave could only be used to care for children whose schools or place of care was closed, or whose care provider was unavailable for reasons related to COVID-19.
- ARPA refreshes the 10-day bank for paid sick leave, even for employees who have used up all of their FFCRA sick leave. For sick leave taken between April 1 and September 30, employers may take an additional employment tax credit of up to \$511 per day or \$200 per day, depending on the reason for leave.
- For EFMLA, the total tax credit per employee is now \$12,000 (up from \$10,000).
- In providing paid leave, employers cannot discriminate in favor of highly compensated employees, on the basis of full-time employment status, or on the basis of employment tenure—if they do, the tax credits are not available.

We hope to receive more clarity and guidance from the IRS or Department of Labor in the form of FAQs and/or regulations.

COBRA Subsidy. The ARPA includes a 100% premium subsidy of COBRA health insurance premiums that are due between April 1 – September 30, 2021 for eligible employees:

- Affected employers: All employers who offer COBRA benefits and employers whose employees qualify for continuation coverage through a state’s mini-COBRA program (including Oregon’s small business state continuation program).
- Eligible employees:
 - Employees and dependents who are eligible for COBRA benefits due to (i) an **involuntary** termination; or (ii) **involuntary** reduction of hours worked. Employees eligible for COBRA due to other reasons (e.g. divorce, voluntary resignation) do not qualify for this subsidy.
 - This includes employees eligible for COBRA benefits both prior to and during the April 1 – September 30 timeframe. For example, employees who were involuntarily terminated in 2020 could also qualify for the COBRA subsidy, even if they did not initially elect COBRA coverage. The employee’s election under this provision will not be retroactive; coverage will only be available prospectively from the second election date. Therefore, there could be a break in insurance coverage in some cases.
 - An individual’s eligibility for the subsidy ends immediately once the individual becomes eligible for another group health plan, Medicare or if the individual’s maximum period of COBRA coverage expires (typically 18 months).
- Notices: Plan Administrators will need to send out notices to all eligible employees and dependents that this COBRA premium assistance is available. The notice must be sent no later than May 31, 2021. The Department of Labor is supposed to provide the model notices no later than April 10, 2021. We will send out the model notices when they are available.
- Employers will pay the premiums on behalf of the eligible employees and then be reimbursed through a payroll tax credit, similar to the manner in which they recovered the mandatory FFCRA paid leave costs.

For more information, please contact our Labor and Employment attorneys, [Amanda Walkup](#), [Andy Lewis](#) and [Mario Conte](#).

This summary provides general information and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. If you have specific legal questions, you are urged to consult with your attorney concerning your own situation.