



EMPLOYMENT LAW ALERT

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COVID-19 Relief Legislation: Round Three

On March 11, 2021, President Biden signed into law the third round of COVID-19 relief, providing additional assistance to businesses and individuals. The American Rescue Plan Act of 2021 (the “Act”) contains provisions, among other things, relevant to employer obligations and employee rights, including concerning the Families First Coronavirus Response Act, COBRA subsidies, and unemployment insurance supplements.

As we discussed in prior Alerts, the benefits under the Families First Coronavirus Response Act (FFCRA) expired on December 31, 2020 and was thereafter voluntary through March 31, 2021. This voluntary benefit, for which employers may receive tax credits for providing benefits, was again extended, through September 30, 2021. In addition, the Act expands the reasons for which an employee can take FFCRA leave. Further to the already existing bases for leave, an employee is eligible for FFCRA leave (i) to receive a COVID-19 vaccination, (ii) to recover from any injury, disability, illness or condition related to such vaccination, and/or (iii) if the employee is seeking or awaiting the results of a diagnostic test or medical diagnosis for COVID-19 (or their employer has requested such a test or diagnosis).

There are other notable revisions to the voluntary FFCRA benefits in the Act. For example, the 10-day limit for emergency paid sick leave (EPSL) will reset beginning on April 1, 2021. Therefore, employees who already exhausted their EPSL leave time will be eligible for an additional 10 days (80 hours) of paid time for qualifying events. The Act also expands the emergency FMLA provisions to include all of the qualifying reasons under EPSL. This means that an employee who is on EPSL who requires additional time off could be eligible for up to another 12 weeks of emergency FMLA. As a result, after April 1, 2021, employees may be entitled to up to 14 weeks of paid time off under the FFCRA. The Act also includes non-discrimination provisions, which provide that employers cannot discriminate in granting EPSL or emergency FMLA to certain classes of employees. Thus, an employer who discriminates in favor of employees who are highly compensated, full-time, or on the basis of an employee's tenure with a company could lose all FFCRA tax benefits.



Significantly, the Act includes a 100% COBRA premium subsidy effective April 1 through September 30, 2021 for eligible individuals who wish to remain on their previous employers' health insurance. The subsidy does not apply to individuals who voluntarily terminated their employment. The Act requires that employers provide updated or separate COBRA notices describing the premium subsidy and provide it to all eligible individuals. Employers must also provide an additional 60-day enrollment period beginning on April 1, 2021 for eligible individuals who previously declined coverage or who allowed their coverage to lapse.

Finally, under the Act, individuals receiving unemployment will receive an additional benefit of \$300 per week through September 6, 2021. Moreover, the first \$10,200 in unemployment benefits received in 2020 will be considered *non-taxable* for households with incomes under \$150,000.

It is anticipated that guidance will be forthcoming from by various agencies clarifying and providing additional information on these new benefits. It is important for employers to stay aware of the changing landscape relating to COVID-19 legislation and ensure that their policies and practices remain compliant.

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