



ARPA – THE AMERICAN RESCUE PLAN IS NOW LAW

- President Biden signed into law The American Rescue Plan Act of 2021 (ARPA)
- The bill includes COBRA subsidy updates
- The bill addresses and expands ACA subsidies
- The bill provides for a temporary increase in the maximum amount that can be contributed to a Dependent Care Reimbursement Account (DCRA)
- ARPA continues the credits for employers that voluntarily choose to continue Emergency Family Leave Expansion

On March 11, 2021, President Biden signed into law the \$1.9 trillion relief bill commonly referred to as The American Rescue Plan Act of 2021 (ARPA). Overall, the bill will provide relief in many forms, including but not limited to, direct stimulus payments to eligible recipients, unemployment assistance, aid for small businesses, aid to schools, and child tax credits. Below is a summary of the most significant items in the bill from the standpoint of employee benefit plans.

COBRA SUBSIDIES

From April 1, 2021 to September 30, 2021, employees with an involuntary termination or reduction of hours will be eligible to receive a 100% subsidy of health insurance premiums under the Consolidated Omnibus Budget Reconciliation Act (COBRA). This will effectively allow unemployed individuals (and their spouses and dependent children) to continue employer-sponsored coverage after losing employment without having to contribute towards any portion of their premiums through September 2021. Employees who voluntarily terminated their employment are not eligible, and all other COBRA Qualifying Events do not qualify for ARPA's COBRA subsidy.

Even an employee who experienced a loss in coverage in the early days of the pandemic would still be eligible for up to six-months of free COBRA coverage. Employers who follow the appropriate notice requirements will receive reimbursements equal to the premium amounts — and will have to seek these reimbursements as tax credits. Employers need to provide COBRA notice forms to eligible individuals, and plans will be required to alert people to the availability of the subsidy, their specific enrollment window, and if their subsidy will end before September 2021. These notices will need to be distributed (generally mailed) within 60 days subsequent to April 1, 2021. The U.S. Department of Labor (DOL) is tasked with developing model notices by April 10, 2021.

Individuals who previously experienced an involuntary termination (or reduction in hours) but did not elect COBRA, or those who elected and subsequently dropped COBRA coverage, and who are still within their COBRA maximum coverage period, must also be given a second chance to elect COBRA to take advantage of ARPA's subsidy. If such individuals elect COBRA coverage within 60 days of being notified of the subsidy



opportunity, coverage would be provided *prospectively* from the second election date, not retroactively to the original COBRA event date. There could be a lapse in coverage between the original COBRA event and the new special, second election. Employers cannot force the QB to pay back premiums to take advantage of this second election opportunity. In no case is an individual eligible for more than the COBRA maximum coverage period measured from the original event date.

The subsidy will end immediately if an individual becomes eligible for coverage under another group health plan or Medicare and would also end early if the individual's maximum period of COBRA continuation coverage (typically 18 months) concludes prior to September 2021. The onus is on the enrollee to inform their former employer that they are no longer eligible for subsidized coverage. ARPA takes this a step further, however, subjecting enrollees who fail to update their former employers about a change in eligibility to a \$250 fine and up to 110% of the full subsidy amount if the failure is determined to be deliberate.

Employers will recover premiums not paid by COBRA QBs through a payroll tax credit, similar to the manner in which employers recovered mandatory FFCRA (Families First Coronavirus Response Act) paid leave costs. If the tax credit exceeds the amount of payroll taxes due for a particular period, the employer can apply for a refundable tax credit. In most cases, however, the employer will have more payroll taxes due for any particular period than the amount of credit they can claim for lost COBRA premiums. Public agencies are eligible for this credit.

While this subsidy goes into effect in a matter of weeks, there are still questions yet to be answered. As the DOL releases model notices, regulations and other guidance, we will continue to update clients on the COBRA subsidy.

ACA SUBSIDIES

In addition to COBRA, the bill also addresses and expands ACA subsidies. ARPA will increase the generosity of ACA subsidies at every level and will cap the cost of premiums at 8.5 percent of an individual's household income. This will be retroactive to January 1, 2021 and those currently enrolled in an Exchange plan will be able to claim an extra subsidy immediately.

DEPENDENT CARE FSAS

ARPA also provides for a temporary increase (only for 2021), in the maximum amount that can be contributed to a Dependent Care Reimbursement Account (DCRA, also known as a Dependent Care Assistance Plan (DCAP) or a Dependent Care Flexible Spending Account (DCFSA)). For 2021 only, ARPA increases the amount that may be elected on a tax-free basis, through a Section 129 DCAP, from \$5,000 to \$10,500 (or from \$2,500 to \$5,350 for individuals that are married but filing separately).

While these reimbursement accounts exist under IRC Section 129, they have been capped at \$5,000 and have not been increased since 1986. While many will applaud this welcome relief, this year has taught many employees to carefully plan their dependent care (day-care/custodial care) expenses because the use-it or lose-it features of this type of plan are still present. Also, ARPA does not amend current non-discrimination guidance, which means that plans must still ensure that no more than 55% of all dollars in their DCAPs benefit highly compensated workers (generally owners, officers, and/or folks earning \$125,000/year or more). So, employers are well-advised to carefully consider the impact that doubling the deferral limit might have on their plans.



PAID FAMILY LEAVE

ARPA continues the credits for employers that voluntarily choose to continue Emergency Family Leave Expansion originally required under the Families First Coronavirus Response Act (FFCRA) that expired on December 31, 2020. The Consolidated Appropriations Act of 2021 (CAA), which was passed on December 27, 2020, had given employers the option to voluntarily continue to pay COVID-19-related sick and family leaves and continue to receive a tax credit for those leaves until March 31, 2021. ARPA provides for continued reimbursement of employers voluntarily providing COVID-19-related leaves from April 1, 2021 through September 30, 2021. It also expands the qualified paid sick leave reasons to include leave provided to an employee who is obtaining a COVID-19 immunization, recovering from a condition related to COVID-19 immunization or seeking or awaiting the results of a COVID-19 test or diagnosis either because the employee was exposed, or the employer required the test or diagnosis. Employers will be able to provide an additional ten days of COVID-19-related sick leave to employees beginning on April 1, 2021. In addition, ARPA expanded the reasons that leave can be provided as paid family leave to include all of the reasons that paid sick leave can be used. ARPA also increases the amount employers will be reimbursed from \$10,000 to \$12,000. Finally, ARPA added a non-discrimination provision to the paid sick leave and paid family leave tax credits. Employers will not be able to claim the tax credits if it discriminates in favor of highly-compensated employees, full-time employees, or employees with more tenure. This is another area where the DOL is expected to release updated guidance in the coming weeks.

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