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The American Rescue Plan Act

On March 11, 2021, President Biden signed into law the American Rescue Plan Act ("ARPA"), a $1.9 trillion economic relief package. This stimulus bill is intended to expedite the United States' recovery from the economic and health effects of the COVID-19 pandemic and the ongoing recession. Below is a summary of the salient aspects of the relief package.

Economic Relief for Businesses

Airlines, eligible contractors, restaurants, and bars are eligible to receive direct funding. Approximately $7.25 billion is set aside to boost the Paycheck Protection Program ("PPP"). The ARPA expands PPP eligibility to include tax-exempt entities such as 501(c)(5) organizations as well as locations of larger nonprofits if the nonprofit's lobbying activities make up less than 15% of its activities. Certain publishing organizations (assigned a NAICS Code of 519130) that collect and distribute national news on a local or regional level are also eligible for PPP funding. The PPP is set to expire March 31, 2021.

Additionally, roughly $15 billion is set aside for the provision of $10,000 Economic Injury Disaster Loans ("EIDL") for businesses eligible under either Section 1110(e) of the CARES Act or Section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.

COBRA Continuation Coverage

The ARPA requires employers to cover 100% of the cost of COBRA continuation coverage, for coverage periods beginning April 1, 2021 and ending September 30, 2021, for "assistance eligible individuals." An assistance eligible individual means a COBRA qualified beneficiary who becomes eligible for COBRA coverage due to an <u>involuntary</u> termination of employment or a reduction in hours, and who elects COBRA coverage. The COBRA premium subsidy requirement extends to the affected employee, as well as to their spouse and any dependents who meet the definition of a qualified beneficiary and enroll in coverage. The subsidy period terminates when the individual reaches the end of the COBRA maximum coverage period, becomes eligible for Medicare, or becomes eligible for other group health plan coverage.

For any person who becomes a qualified beneficiary between April 1, 2021 and September 30, 2021, a group health plan's COBRA election notice must include specific information about the premium subsidy.

In addition, the ARPA provides an extended opportunity to elect COBRA to the following:

1. Individuals who do not have a COBRA election in place as of April 1, 2021, but otherwise meet the definition of an assistance eligible individual and who are within the maximum coverage period; and

2. Individuals who elected but discontinued COBRA before April 1, 2021, and who are within the maximum coverage period.

The extended election period begins on April 1, 2021 and ends 60 days after the date the employer provides the notice described below. If elected during this extended period, COBRA coverage begins with the first period of coverage beginning on or after April 1, 2021, and does not extend beyond the original maximum coverage period.

The ARPA requires plan administrators to provide notice of the extended election period to individuals who became assistance eligible individuals, and to those entitled to make an election during the extended election period. Plan administrators must furnish this notice by May 30, 2021. In addition, plans generally must notify assistance eligible individuals that the subsidy will expire between 45 and 15 days before the expiration date.

The ARPA also permits (but does not require) a group health plan to permit an assistance eligible individual to elect a different coverage option outside of open enrollment, during a 90-day window following notice to the individual. The different coverage option cannot have a greater premium than existing coverage, and cannot consist solely of excepted benefits, a qualified small employer HRA, or Health FSA.

Employers who must provide the ARPA's COBRA subsidy may claim an amount equal to the unpaid premiums as a refundable tax credit with respect to the employer share of Medicare taxes. However, an employer who claims a credit for an amount under this provision of the ARPA cannot claim a credit for the same amount under the Employee Retention Credit, or with respect to extended emergency paid sick and family leave.

The ARPA directs the Treasury, Department of Labor, and Department of Health and Human Services to publish model notices within 30 days of the law's enactment. It remains to be seen how this new, mandated COBRA subsidy will interact with the deadline extension of up to one year under the Employee Benefit Security Administration's Disaster Relief Notice 2021-01.

Credits for Paid Sick and Family Leave

Although the requirement to provide pandemic-related sick and family leave under the Families First Coronavirus Response Act ("FFCRA") expired on December 31, 2020, the Consolidated Appropriations Act, 2021, permitted employers who continued to provide the leave voluntarily to claim the corresponding tax credit through March 31, 2021. The ARPA further extends the credit to September 30, 2021, but provides the credit against employer Medicare taxes (instead of employer Social Security taxes).

The ARPA also restarts the 10-day limit on the amount of qualified sick leave wages that may be taken into account for each employee, increases the aggregate maximum credit for qualified family leave wages to $12,000, and adds a nondiscrimination requirement. The nondiscrimination requirement limits the availability of the tax credit to employers who make qualified sick and family leave wages available on a basis that does not discriminate in favor of highly-compensated employees, full-time employees, or to employees based on their tenure with the employer.

Additionally, the ARPA expands the definition of qualifying paid family leave to allow tax credits to be claimed for all qualifying uses of paid sick time. The ARPA clarifies that, in addition to the bases for taking pandemic-related sick and family leave under the FFCRA, leave may be taken (and credits claimed) under the following circumstances:

1. when an employee is awaiting the results of COVID-19 testing or a medical diagnosis of the same after exposure, where the employer requested the testing or diagnosis;

2. when the employee is obtaining an immunization related to COVID-19; and

3. when an employee is recovering from an injury, disability, illness, or condition related to a COVID-19-related immunization.

Employee Retention and Rehiring Credit

The ARPA extends the Employee Retention Credit from July 1, 2021 through December 31, 2021, and provides a credit of 70% of qualified wages, up to $10,000 per eligible employee, per quarter. The ARPA increases the credit for businesses established after February 15, 2020 with average gross receipts of up to $1 million, and for employers with gross receipts of less than 10% of gross receipts in the same calendar quarter in 2019. Payroll tax credits claimed under the ARPA apply against the employer share of Medicare (not Social Security) taxes.

Under previously passed legislation, this credit is available to employers whose gross receipts are at least 20% less than their gross receipts in the same calendar quarter in 2019 (or, at the employer's option, the previous calendar quarter). In addition, employers who are required to fully or partially suspend operations due to a COVID-19 related order may claim the credit. For employers with more than 500 full-time employees, "qualified wages" mean those paid when an employee is not providing services. For employers with fewer than 500 full-time employees, all wages are eligible for the credit. Both types of employers can include certain health plan expenses as qualified wages when calculating the credit. However, qualified wages do not include amounts taken into account under a PPP loan and certain grants.

Changes to Dependent Care Assistance Plans

The ARPA temporarily increases the amount of pre-tax benefits a dependent care assistance plan ("DCAP") may provide from $5,000 to $10,500 (or from $2,500 to $5,250 for taxpayers who are married filing separately). The increase applies only to taxable years beginning in 2021. Plan sponsors must adopt an amendment to implement the change, but have until the last day of the plan year in which the amendment takes effect to do so, provided that the plan is operated accordingly in the interim.

Other Tax Credits

1. **Child Tax Credit**: The ARPA modifies the Child Tax Credit so that the credit is fully refundable for 2021. The definition of "qualifying children" now includes children who are 17 years old. The amount of the credit for children over the age of seven has been increased to $3,000. The amount of the credit for children between the ages of 0-6 has been increased to $3,600. The ARPA also includes a directive to the Internal Revenue Service that these credits are to be paid in advance monthly starting July 2021 through December 2021.

2. **Earned Income Tax Credit**: For 2021, the ARPA expands the Earned Income Tax Credit by making it available to taxpayers who do not have children.

3. **Premium Tax Credit**: The ARPA addresses premium tax credits for those who purchase health insurance through the Health Insurance Marketplace, or Exchange, in 2021 and 2022. First, it eliminates the upper income limit for eligibility (historically, 400% of the federal poverty line). Second, it increases the amount of the credit through a decrease in the amount individuals must contribute for exchange coverage. The adjusted amount ranges from 0% to 8.5% of household income. Individuals who receive unemployment compensation in 2021 may qualify for additional benefits.

Individual Stimulus Checks

Similar to previous rounds of COVID-related relief, the ARPA includes stimulus checks for individuals. The amounts paid will be determined using 2020 tax returns if already processed, or 2019 tax returns if the IRS has not already processed a taxpayer's 2020 return. However, the thresholds have changed slightly since the last round of these economic impact payments. Taxpayers whose adjusted gross income ("AGI") is less than $75,000 ($150,000 for married filing jointly; $112,500 for head of household) will receive a payment for $1,400 ($2,800 for married filing jointly). These payments phase out completely for taxpayers with an AGI of $80,000 ($160,000 for married filing jointly; $120,000 for head of household). Eligible individuals will also receive an additional $1,400 per dependent.

For More Information

We will continue to provide updates on these issues as they evolve. In the meantime, if you have any questions regarding the stimulus legislation or other related issues, please **CLICK HERE** to access our relevant practice areas and contact information on individual lawyers.