

March 19, 2021

## What the American Rescue Plan Means for Employers

On March 11, President Biden signed the \$1.9 trillion COVID-19 relief package known as the American Rescue Plan (the Plan), which provides financial and other assistance to businesses and workers. The Plan includes important new developments and expansions of the Families First Coronavirus Response Act (FFCRA), as outlined below.

Employers choosing to provide leave from April 1 through September 30, 2021, under the Plan should note the following:

**Reasons for Leave Expanded to Include Vaccination-Based Issues.** Reasons employees qualify for emergency paid sick leave or expanded family and medical leave (e-FMLA) are expanded to include:

- leave to obtain a COVID-19 vaccine;
- recovery from an injury, disability, illness or condition related to receiving the COVID-19 vaccine; and
- time spent to seek or await the results of a COVID-19 test or diagnosis either because the employee has been exposed to COVID-19 or because the employer requested the test or diagnosis.

**Available Paid Time Off Expanded.** The Plan expands eligibility for paid leave under e-FMLA to include all of the reasons available under the emergency paid sick leave portion of the FFCRA (effectively making 12 weeks of leave available) where:

- an employee is subject to a quarantine or isolation order;
- an employee is told to self-quarantine by a healthcare provider due to COVID-19;
- an employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- an employee is caring for an individual who is subject to a quarantine or isolation order or has been advised to self-quarantine; and
- an employee's child's school or place of child care is closed due to COVID-19 (for which employees were always eligible to seek e-FMLA under the original FFCRA).

**Additional Time for Emergency Sick Leave.** The amount of emergency paid sick leave "reloads" on April 1, 2021, making employers eligible to seek a tax credit for employees taking an additional 10 days (or 80 hours) of leave for their own symptoms, quarantine or isolation or for one of the new reasons related to receiving the vaccine or testing, as outlined above. This type of leave continues to be eligible for pay at the employee's regular rate of pay, up to \$511 per day. Emergency paid sick leave for reasons related to care for another also reloads on April 1, and employees continue to be eligible for pay at two-thirds of their regular rate of pay, up to \$200 per day.

**Increased Total Benefit Under e-FMLA and Corresponding Tax Credit.** For e-FMLA, an employer is eligible for a total tax credit of \$12,000 per employee for up to 12 weeks, and the first two weeks no longer need to be unpaid (or taken under the emergency paid sick leave portion of the FFCRA). The rates of pay and caps remain the same (regular rate of pay up to \$511 per day and two-thirds of the regular rate of pay up to \$200 per day, respectively). Unlike the new bucket of 10 days available

for emergency paid sick leave, an employee is still entitled to only a total of 12 weeks of leave in any 12-month period per the terms of the FMLA.

***Nondiscrimination Provision.*** The Plan also includes a nondiscrimination provision that prohibits employers from discriminating in providing paid leave under the FFCRA by limiting this benefit to highly compensated, full-time or longer-tenured employees.

***Background on the FFCRA.*** For additional information on the FFCRA, please refer to:

- [Congress Declines to Extend Paid Sick and Emergency Family Leave but Incentivizes Employers To Continue Voluntarily Providing Leaves](#), December 28, 2020
- [Department of Labor Wage and Hour Division Issues Employment Law Guidance Relating to COVID-19](#), March 26, 2020
- [COVID-19 – Answers to Questions on Every Employer's Mind](#), March 18, 2020

***Additional Aspects of the Plan.*** The Plan also provides for additional benefits to employees, including:

- ***Additional Stimulus Payments.*** Direct payments of up to \$1,400 to most Americans.
- ***Increase of Unemployment Benefits.*** A \$300 addition to state-provided unemployment insurance beginning the week ending March 20 through the week ending September 4, 2021 (the official end date is September 6, 2021).
- ***COBRA.*** COBRA subsidies to certain qualified individuals for the period April 1, 2021, through to the earliest of (i) September 30, 2021; (ii) the end of their COBRA coverage period, e.g., 18 months; or (iii) the date they become eligible for another group health plan or Medicare.
- ***Dependent Care Assistance.*** Employers may now voluntarily increase the maximum amount available for reimbursement under a dependent care assistance plan from \$5,000 to \$10,500 for the 2021 taxable year. Our recent alert, "[American Rescue Plan Provides COBRA Subsidies and Increased Dependent Care Spending Account Limits](#)," explains these benefits in more detail.

The Plan provides expansive benefits, and we suggest speaking with legal counsel regarding what options may be available to you or your business and how these changes may impact your workforce.

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For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our [COVID-19 Resource Center](#).

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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