

What Employers Need To Know About The American Rescue Plan Act of 2021

On March 11, 2021, the President signed into law the American Rescue Plan Act of 2021 (ARPA). The ARPA expands certain leave provisions of the Families First Coronavirus Response Act (FFCRA) and also extends tax credits available to employers with less than 500 employees who voluntarily choose to grant employees paid leave through September 30, 2021.

Last year, the FFCRA was enacted in response to the COVID-19 pandemic. Under the FFCRA, employers with fewer than 500 employees were required to provide up to two weeks paid leave under the Emergency Paid Sick Leave Act (EPSLA) and up to 10 weeks of paid family leave under the Emergency Family and Medical Leave Act (EFMLA) to employees who were unable to work due to COVID-19 related reasons. Although the requirements for paid leave expired at the end of last year, through the Consolidated Appropriations Act of 2021 (CAA), employers could still voluntarily choose to provide FFCRA paid leave to employees and receive refundable payroll tax credits through March 31, 2021.

With the recent passage of the ARPA, employers should take note of several provisions that expand on the FFCRA. The FFCRA provided six qualifying reasons for the paid leave. The ARPA adds three more qualifying reasons for which an employer may voluntarily provide paid leave to an employee:

- (1) for obtaining a COVID-19 immunization;
- (2) for recovery from an injury, disability, illness, or condition related to immunization; and
- (3) for seeking or awaiting the result of a COVID-19 test or diagnosis when the employee has either been exposed to COVID-19 or the employer has requested the test or diagnosis.

Additionally, the ARPA resets the 10-day/80-hour limit for paid sick leave starting April 1, 2021. Accordingly, if employees have previously exhausted their entitlement to paid sick leave under the FFCRA, they now have another 10-day/80-hours for use.

In addition to the new qualifying leave reasons and the tax credits, the ARPA also requires employers voluntarily providing leave and receiving tax credits to follow a non-discrimination rule. The rule makes the tax credits available only to those employers who voluntarily provide leave to all employees without discriminating against certain categories of workers. Specifically, an employer cannot be eligible for the tax credit if it discriminates in favor of certain highly compensated employees, full-time employees, or based on an employee's tenure of employment.

Comment: Employers should be cognizant of the fact that the ARPA provides additional qualifying reasons for leave, resets the limit for paid leave, and now provides an anti-discrimination provision that must be adhered to for an employer to claim the tax credit. As the COVID-19 pandemic is an ever-evolving situation, the Weber Gallagher Employment Group will continue to provide updates.