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# Client Alert
# March 18, 2021

## American Rescue Plan Act of 2021

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On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (the "Act" or "ARPA"), which is a $1.9 trillion economic stimulus package. A stimulus package of this size will undoubtedly have economic ripple effects in every corner of American society. This Client Alert highlights the support ARPA provides for individuals and workers as a result of the ongoing COVID-19 pandemic.

### RECOVERY REBATES TO INDIVIDUALS

ARPA provides a direct payment, known as the "2021 rebate amount," to eligible individuals. Subject to the income requirements set forth below, the 2021 rebate amount is $1,400 for individuals ($2,800 in the case of a joint return) *plus* an additional $1,400 for each dependent, if any. Under ARPA, dependents include adult dependents such as college students and elderly relatives.

Eligibility for the 2021 rebate amount is based on adjusted gross income. For individuals, the income limit is $75,000; for spouses filing jointly or a surviving spouse, the income limit is $150,000; and for a head of household, the income limit is $112,500. Above these limits, there are sharp declines in the payments down to zero.

The ARPA direct payment is in addition to two previous direct payments, the first being the $1,200 payment under the CARES Act, enacted in March 2020, and the second being the $600 payment under the Consolidated Appropriations Act of 2021, enacted in December 2020.

### TAX CREDITS FOR PAID SICK AND FAMILY LEAVE

Under the Families First Coronavirus Response Act (FFCRA), which became law in March 2020, "covered" employers, employers with fewer than 500 employees, were required to provide Emergency Paid Sick Leave ("EPSL"), which totalled 80 hours for full-time employees, and Emergency Family and Medical Leave Expansion Act leave ("EFMLEA"), which totalled 12 weeks (with the first 2 weeks being unpaid). In exchange for these paid leave mandates, certain employers were reimbursed with payroll tax credits. *These paid leave mandates expired on December 31, 2020, but under the Consolidated Appropriations Act of 2021, the tax credits were extended until March 31, 2021 for those covered employers who chose to* ***voluntarily*** *continue these paid leave benefits.*

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ARPA provides that employers may continue to get tax credits through September 30, 2021 if they *voluntarily* choose to continue the previously-expired paid sick leave and paid family leave described in the EPSL and the EFMLEA, respectively, subject to the *benefit enhancements* described below.

**Requirements for Paid Sick Leave Tax Credits**

Employers who voluntarily choose to continue the paid sick leave provisions must provide 10 days of leave as of April 1, 2021, and must continue to offer the leave for all six reasons required under the EPSL, including an expansion of the third reason:

(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
(3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis***, the employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 and such employee has been exposed to COVID-19 or the employee's employer has requested such test or diagnosis, or the employee is obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to such immunization.*** (Bold, italicized language is expansion of the third reason added by ARPA).
(4) The employee is caring for an individual who is subject to an order described in subparagraph (1) or has been advised as described in paragraph (2).
(5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
(6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

In order for employers to receive the tax credits, from April 1, 2021 through September 30, 2021, an employee must be able to use up to 10 days of paid sick leave, in the amount of 2/3 regular rate of pay capped at $200 per day and $2,000 in the aggregate for reasons (4) – (6); and regular rate of pay capped at $511 per day and $5110 in the aggregate for reasons (1) – (3). This is the case even if employees have previously exhausted their entitlement under the EPSL. Additionally, employers will not get tax credits for paid leave in excess of 10 days, even if an employee has not exhausted their entitlement under the EPSL. Accordingly, beginning April 1, 2021, employers should cap paid sick leave for the above purposes at 10 days.


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**Requirements for Paid Family Leave Tax Credits**

With respect to paid family leave tax credits, while there is no additional amount of leave required beyond the 12 weeks required in the EFMLEA, ARPA substantially expands the reasons for which an employee can take paid family leave. Under EFMLEA, family leave was limited to leave to care for the son or daughter under 18 years of age of an employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency. ARPA expands the reasons for family leave to include the paid sick leave reasons (1) – (6) above, including expanded reason 3. Additionally, ARPA eliminates the provision that the first 10 days of family leave are unpaid. Finally, ARPA provides that an employer is not required to pay more than $200 per day and $12,000 in the aggregate, which represents an increase in the aggregate amount from $10,000. Like the EFMLEA, family leave under ARPA is paid at a rate of 2/3 regular rate of pay capped at $200 per day. This would appear to be the case even if an employee takes family leave for paid sick leave reasons (1) – (3), above. If an employer fails to expand the reasons for leave as described above, tax credits will not be available.

**Can An Employer Choose to Voluntarily Apply the Emergency Paid Sick Leave Act after March 31, 2021, but not the Emergency Family and Medical Leave Expansion Act?**

Given the above-described benefit enhancements required for paid family leave tax credits, employers may ask whether they can voluntarily extend the paid sick leave provisions and not the paid family leave provisions. Such an extension would provide 10 new days of paid sick leave subject to the terms described above. Given that ARPA is silent on this question, the paid sick leave and paid family leave provisions are contained in separate sections, and neither section integrates the other section or requires an employer to pay qualifying wages pursuant to the other section, it appears that employers may be able to extend only one of the provisions. Employers wishing to consider this option should consult with legal counsel given the newness and complexity of the legislation.

## EXTENSION OF CARES ACT UNEMPLOYMENT PROVISIONS

ARPA extends three new federal unemployment programs created by the CARES Act:

(1) **Pandemic Unemployment Assistance (PUA):** PUA provides unemployment benefits for certain self-employed individuals, gig workers, and workers not otherwise eligible for regular unemployment compensation. The Consolidated Appropriations Act of 2021 increased the length of time PUA benefits would be available to recipients from 39 weeks to 50 weeks and also extended the time to make a claim until March 14, 2021. ARPA

both extends the date to claim PUA benefits until September 6, 2021, and increases the number of weeks available to 79 weeks.

(2) **Federal Pandemic Unemployment Compensation (FPUC):** The FPUC was a short-term, enhanced $600 weekly unemployment payment in addition to the weekly unemployment benefit amount, which expired for weeks of unemployment ending on or before July 31, 2020. The Consolidated Appropriations Act of 2021 partially restored the FPUC by providing $300 on top of a recipient's weekly unemployment benefit for weeks of unemployment beginning after December 26, 2020 and ending on or before March 14, 2021. ARPA extends the additional $300 unemployment benefit until September 6, 2021.

(3) **Pandemic Emergency Unemployment Compensation (PEUC):** The PEUC initially provided an additional 13 weeks of unemployment benefits after employees had exhausted their regular unemployment benefits or for individuals who are not eligible for regular unemployment benefits. The Consolidated Appropriations Act of 2021 extended the PEUC until March 14, 2021 and increased the length of time PEUC benefits are available from 13 weeks to 24 weeks. ARPA both extends the date to claim PEUC benefits until September 6, 2021, and increases the number of weeks available to 53 weeks.

Additionally, ARPA provides that up to $10,200 of unemployment compensation paid in 2020 is not taxable income for recipients that earned less than $150,000.

**PREMIUM ASSISTANCE FOR COBRA CONTINUATION COVERAGE**

ARPA provides that "any assistance eligible individual" does not have to pay COBRA continuation premiums for COBRA continuation coverage during the period from April 1, 2021 through September 30, 2021. An "assistance eligible individual" is a qualified beneficiary who is eligible for COBRA continuation coverage by reason of a qualifying event, *except voluntary termination by the individual*, as defined under applicable law, and who elects such coverage.

Additionally, ARPA provides for an extension of the COBRA election period, meaning that if a qualified individual failed to elect prior to April 1, 2021, or elected and then discontinued coverage prior to April 1, 2021, such individual may still elect COBRA continuation coverage. For such individuals who are eligible for an extended COBRA election period, employers are required to provide notification of their entitlement to elect COBRA continuation coverage. ARPA provides that the Secretary of Labor will provide model notification not later than 30 days after enactment. "Assistance eligible individuals" are also entitled to notice of expiration of the period of premium assistance.  The Secretary of Labor is required to provide model notices for the expiration of premium assistance not later than 45 days after enactment.

As illustrated by the discussion above, ARPA is a complex, voluminous (242 pages) piece of legislation.  This client alert highlights certain key aspects which require decisions by employers regarding paid sick leave and paid family leave, and actions by employers with respect to COBRA notification.  Also, as employers continue to make decisions around furlough, layoff, and termination, the extended unemployment provisions are important factors to consider.  As indicated above, the legislation incorporates and amends other statutory provisions such as the FMLA, the FFCRA, and the CARES Act.  Accordingly, prior to making any decisions, employers are wise to consider the implications of all applicable statutes.

*This Client Alert was prepared by Brendan Collins and Nan ONeill and reviewed with Kier Wachterhauser.  If you have any questions regarding this Alert, please contact Nan ONeill, Kier Wachterhauser, Brendan Collins or the attorney assigned to your account, or call 617-479-5000.*