

# The American Rescue Act

## Important Provisions for Employers

On March 11, 2021, President Joe Biden signed into law the American Rescue Plan Act of 2021 – a \$1.9 trillion economic relief package.

Here is a summary of important provisions that affect employers in the Act.

### COBRA Continuation Coverage

- Subsidizes 100% of premiums for eligible state and federal COBRA recipients for continuation coverage if they lose their job through Sept. 30, 2021, and no longer available once an individual becomes eligible for coverage under another group health plan or Medicare.
- The premium initially is “advanced” by the employer, plan, or insurer and then reimbursed by the government through a refundable tax credit (against Medicare hospital insurance [HI] taxes).
- Creates a special election period for any individual who did not elect federal COBRA continuation coverage but who otherwise would have been eligible for the COBRA subsidy and for any individual who elected federal COBRA continuation coverage and discontinued such coverage before April 1, 2021.
- The subsidy applies for any period of coverage during the period April 1, 2021, through September 30, 2021.
- For self-insured plans, the COBRA premium is covered by the employer and reimbursed through a payroll tax credit. For fully insured plans, the tax credit is claimable by the insurer.

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### COBRA Continuation Coverage, continued

- Provides for a “Plan Enrollment Option,” which may permit assistance eligible individuals to change coverage to a lower-cost option within 90 days of receiving the required employer notice. This is provided the plan sponsor determines to permit such change and the premium for such lower-cost option is less than the premium for the coverage option in which the individual was enrolled at the time the COBRA qualifying event occurred. The lower-cost option is offered to similarly situated employees, and the lower-cost option provides more than limited health coverage (coverage other than coverage providing only excepted benefits, qualified small employer health reimbursement arrangement coverage, or flexible spending arrangement coverage).

### Dependent Care FSAs

- The dependent care FSA limit for 2021 – from \$5,000 to \$10,500 (from \$2,500 to \$5,250 for married filing single).
- An employer can amend its cafeteria plan retroactively to adopt this increased limit, as long as it amends the plan by the end of the plan year and operates consistently with the amendment.

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### Modification to the Paycheck Protection Program

- Increases funding total to a little under \$814 billion.
- Maintains eligibility for 501(c)(3) and 501(c)(6) organizations.
- Expands eligibility to labor organizations, social/recreational clubs, and fraternal benefit societies.

### Extension of Federal Pandemic Unemployment Assistance

- The benefit remains at \$300/week through September 6, 2021.
- Increases the total number of weeks from 50 weeks to 79 weeks for individuals that don't qualify for regular benefits.
- No changes to eligibility to benefits for individuals that don't qualify for state unemployment benefits (e.g., self-employed, gig workers, and others in non-traditional employment).

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### Extension of Pandemic Emergency Unemployment Compensation

- Extends CARES benefits to individuals that exhausted benefits to September 6, 2021 – from 24 weeks up to 53 weeks.

### Extension of Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations

- Increases Federal payments to nonprofits and government agencies from 50 percent to 75 percent after March 31, 2021, through September 6, 2021, for the cost of providing unemployment benefits.

### Employer Credits for Paid Sick and Family Leave

- Extends to September 30, 2021, for employer-provided paid sick and family leave - established under the Families First Coronavirus Response Act (FFCRA).
- Qualified Family Leave covered wages increases from \$10K to \$12K per employee.
- Increases the number of days of paid leave for self-employed from 50 days to 60 days.
- Expands the paid leave credits, including self-employed individuals, to cover COVID-19 vaccinations or wait times for test results or diagnoses.

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### Employer Credits for Paid Sick and Family Leave, continued

- Adds employer restrictions on receiving credits if paid leave policies favor highly compensated employees, full-time workers, or employees based on tenure.
- Provides for reimbursement of pension plan and apprenticeship program contributions made by employers under a collective bargaining agreement that is allocable to employee paid sick and family leave.
- The requirement to provide paid FFCRA sick leave is not extended.

### Affordable Care Act Subsidies

- Makes significant but temporary changes to the existing ACA premium subsidies.
- For 2021 and 2022, the upper-income limit for eligibility for premium tax credits is eliminated, which is currently set at 400% of the federal poverty level. It increases the amount of the premium tax credits by decreasing the amount that an individual must contribute to the cost of coverage.
- Contains a requirement that individuals contribute a percentage of their income toward coverage – this percentage is set at 8.5% of household income for those with incomes of 400% of the federal poverty level or more, meaning that the more an individual makes, the more that individual will be expected to contribute toward the cost of coverage.

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### Affordable Care Act Subsidies, continued

- The amount of premium tax credits available will vary based on the cost of coverage, there will be a level of income at which the individual's required contribution will exceed the cost of coverage, and no premium tax credit will be available.
- For 2021, a taxpayer who receives or is approved to receive unemployment compensation for a week or more is treated as eligible for premium subsidies and any income above 133% of the federal poverty level is disregarded for purposes of determining the contribution percentage the taxpayer must contribute toward coverage.
- Because the contribution level for incomes up to 150% of the federal poverty level is zero under the Act, an individual who received unemployment compensation is not be expected to contribute toward the cost of subsidy-eligible coverage.
- Suspends repayment of excess subsidies for 2020.

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### Employee Retention Credit

- Extends the employee retention credit through December 31, 2021. The employee retention credit was originally enacted in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. 116-136, and it allows eligible employers to claim a credit for paying qualified wages to employees.
- Expands eligibility for the credit to new startups that were established after Feb. 15, 2020, and companies if their revenue declined by 90% compared to the same calendar quarter of the previous year. The credit is capped at \$50,000 per calendar quarter for startup and notes we thought might be helpful as you communicate with your customers, followers, and community.
- After June 30, 2021, the credit applies against an employer's Medicare hospital insurance (HI) taxes rather than Social Security Old Age, Survivor's, and Disability Insurance (OASDI) taxes. The credit continues to be refundable for employers with insufficient tax liability.

A copy of the full bill can be [located here](#).