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On March 11, 2021, President Biden signed H.R. 1319, the American Rescue Plan Act (ARPA). Below is a brief summary of the provisions most relevant to employers and plan administrators.

Preserving Health Benefits for Workers

COBRA Premium Subsidy and Enrollment Period

The law contains a 100% subsidy of COBRA premiums for assistance eligible individuals (defined below) who have suffered a COBRA qualifying event. COBRA assistance eligible individual is defined as an individual who lost health coverage as a result of an involuntary termination of employment or reduction in hours. The subsidy is available to all impacted qualified beneficiaries (family member). It includes assistance eligible individuals who may have declined COBRA or may have elected it and subsequently dropped it and would, as of April 1, 2021 be in a COBRA period, but for the declination.

The subsidy is available from April 1, 2021 to September 30, 2021. The subsidy ends on the first to occur of exhaustion of the maximum COBRA period (generally 18 months, 29 months for COBRA due to disability), becoming eligible for other comprehensive health coverage, or Medicare. Note: this is different from the generally applicable COBRA terminating rule which provides that COBRA coverage can only be terminated if the individual is actually covered by other comprehensive health coverage or Medicare.

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Participants who become eligible for other coverage must so notify the employer/insurer providing COBRA continuation coverage; the penalty for failure to notify is $250 or 110% of the premium subsidy, whichever is greater.

Plan sponsors must provide all assistance eligible individuals notice explaining the right to the COBRA subsidy and the right to elect COBRA continuation coverage. The employer can, at its discretion, allow individuals to change to other options as long as it is not more expensive than the coverage the individual had at the time of the initial qualifying event.

Persons who become eligible for COBRA continuation coverage should receive a notice, in clear and understandable language, regarding the subsidy availability and the option to enroll in different coverage (if so permitted by the employer). The notice should include:

- The forms necessary for enrollees to establish eligibility for the premium subsidy
- Contact information for the plan administrator,
- Information regarding the extended enrollment period,
- Notification of the participant's obligation to notify the plan if the participant becomes eligible for other coverage
- Description of right to premium subsidy (and conditions thereon)
- Description of option to enroll in different coverage (if so permitted by employer)

The plan administrator must notify the individual of subsidy termination between 45 and 15 days preceding the termination. This notice is not required if the subsidy is terminated due to eligibility for other coverage.

The Department of Labor is directed to issue a model notice explaining subsidy rights within 30 days of the laws' enactment. Further, the Department is directed to issue a model notice of subsidy termination within 45 days of the law's enactment.

The employer or insurer to whom the premium is payable can receive a quarterly tax credit against the employer's share of the Medicare tax. Excess credit can be either refunded or advanced. The employer or insurer must also reimburse any subsidy-eligible employees who pay any amount toward premiums.

Next Steps:

- Identify all assistance eligible individuals. Both those currently on COBRA and those who could be on COBRA but for the fact that COBRA was declined or dropped.
- Be prepared to send out explanatory notices
- Be prepared to track assistance eligible individuals who elect the COBRA subsidy.
- Work with payroll providers to claim the refundable tax credit. It is likely that further guidance will be issued.

Dependent Care Assistance Plan Enhancements

For the 2021 tax year, the ARPA increases the available dependent care assistance amount available through an IRC section 129 dependent care assistance program offered through an IRC section 125 cafeteria plan from $5,000 to $10,500 or $2,500 increased to $5,250 for a married couple filing separately. Note: this is a one year expansion of these amounts.

Credits for Paid Sick and Family Leave

The ARPA extends the tax credit available to employers offering emergency paid sick leave and emergency family leave. As a reminder, the Families First Coronavirus Relief Act (FFCRA) provided that an individual is entitled to emergency paid sick leave if the individual subject to federal/state quarantine; advised by health care provider to self-quarantine; is experiencing COVID-19 symptoms; or the individual is unable to work/telework to care for individual under federal/state/local quarantine or advised by health care provider to self-quarantine or to care for a child whose school or place of care is closed for COVID-19 reasons. An individual is entitled to emergency family leave if the individual is unable to work or telework due to a need for leave to care for a son or daughter as a result of a closure of the child's school or day care facility or the child care's provider is unavailable, due to a coronavirus-declared emergency.

Notably, the ARPA expands the reasons for which emergency family leave is available. Further, leave is made available to individuals obtaining the COVID–19 vaccine or recovering from any injury, disability, illness, or condition related to the vaccine.

The ARPA provides that if an employer continues to make these paid emergency leaves available through September 30, 2021, a tax credit can be taken. Note: the ARPA does not mandate that the employers make the leave available.

Generally, the FFCRA emergency leave mandate expired December 31, 2020. The Consolidated Appropriations Act (CAA) extended the availability of the tax credit through March 31, 2021 available to employers who allowed employees to continue to use previously unused leave. The ARPA continues this permission to receive a tax credit for leave made available. Further, the ARPA makes an additional 10 days of emergency paid sick leave available beginning April 1, 2021.

The ARPA increases the maximum credit available for emergency paid sick leave or emergency family leave from $10,000 to $12,000. The daily limits of $511 for one's own care needs and $200 for care of another remain unchanged.

The ARPA makes the tax credit available to certain government entities specifically those sanctioned under IRC section 501(c)(1) with tax exempt status under IRC section 501(a).

The tax credit can be taken not only on the Social Security tax but also on the Medicare tax beginning after June 30, 2021.

Pensions

Temporary Delay of Designation of Multiemployer Plans as in Endangered, Critical, or Critical and Declining Status

- Plan sponsors of multiemployer plans can elect to retain the same plan status designation as they had in the preceding year
  - Applies to plan years beginning March 1, 2020 and ending February 28, 2021, or the next succeeding plan year (whichever the plan sponsor chooses)
  - Plans that elect to retain the previous year status and then go into critical status will be treated as plans in critical status for that year
- Plans that were in endangered or critical status will have a one-year reprieve from having to update their plan or schedules
- Plans that are not in endangered nor critical status are not required to provide notice of status, but they do have to provide notice if they made an election to retain prior year plan status
- Plans that were in critical status, but elect to retain the previous year designation, if the designation is of endangered status, the plan has to give the notice requisite for plans in endangered status.
- Further, the ARPA provides that a single-employer defined benefit plan amortization period is extended from 7 years to 15 years.

In addition to these employee benefit related provisions, the ARPA provides a temporary increase in the premium tax credit available to certain individuals obtaining health coverage through the marketplace. Of particular note, the ACA's 400% of poverty cliff, i.e. no premium assistance once an individual reaches that threshold, is relaxed for two years. Individuals exceeding 400% of poverty would be entitled to premium assistance if the cost of health care exceeds 8.5% of their income. Further, the ARPA provides some incentives to the dozen or so states that have not expanded Medicaid.

As this Act becomes law and as more information becomes available, we will provide additional information.

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