

## What Employers Need To Know About The Recently Enacted American Rescue Plan Act

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March 15, 2021

On March 11, 2021, the **American Rescue Plan Act of 2021** (the "Rescue Plan") was passed and signed into law. Employers should be aware of the key employment provisions of the Rescue Plan in managing their workforce and in evaluating and implementing their COVID-19 workplace policies and procedures.

### **Extending and Expanding the Payroll Tax Credits for Leaves Voluntarily Provided Under the Family First Coronavirus Response Act ("FFCRA")**

The FFCRA required public employers and private employers with fewer than 500 employees (with limited exceptions) to provide paid leave for qualifying reasons related to COVID-19. The FFCRA's sunset date was December 31, 2020, at which time the mandate to provide leave expired. Covered private employers who provided FFCRA leave were able to claim a tax credit for the payments made during the leave, subject to per diem and total caps.

On December 27, 2020, the **Consolidated Appropriation Act, 2021** ("CAA") was signed into law. The CAA did not extend the FFCRA's mandate to provide leave, but did extend the availability of the payroll tax credits through March 31, 2021, for employers who voluntarily provided leave to employees whose leave entitlements had not been exhausted by the FFCRA's sunset date of December 31, 2020.

The Rescue Plan extends the availability of the payroll tax credits again from April 1, 2021, to September 30, 2021. Unlike the CAA, it also expands the tax credits.

- As to paid sick leave under the Emergency Paid Sick Leave Act under the FFCRA, the Rescue Plan:
  - Adds additional qualifying reasons to take leave (for purposes of qualifying for the tax credits):
    - The employee is seeking or awaiting the results of a diagnostic test for or a medical diagnosis of COVID-19 after an exposure or at the employer's request;
    - The employee is obtaining a COVID-19 vaccine; or
    - The employee is recovering from any injury, disability, illness or condition related to a COVID-19 vaccine.
  - Provides a new annual allotment of up to 80 hours (10 days) per employee of qualifying paid sick leave available for 2021 tax credits, Again, this does not obligate an employer to provide additional leave, but allows employers to offer a new bucket of leave to employees if they so choose.
  - The tax credit an employer can receive for paid sick leave is based on an employee's regular rate of pay, up to a cap of \$511 a day, if the leave is needed for one of the new reasons related to immunization or testing or because of the employee's own symptoms, quarantine or isolation. If the paid sick leave is for any other reason, the amount of tax credit an employer can receive is limited to 2/3 the employee's regular rate of pay and capped at \$200 a day.
- As to the expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act under the FFCRA, the Rescue Plan:

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- Increases the aggregate cap for tax credits from \$10,000 to \$12,000 per employee.
- Expands the reasons to take leave to include the qualifying reasons to take paid sick leave, including the additional reasons set forth above.
- Eliminates the requirement that the first 10 days of expanded family and medical leave is unpaid.
- The available tax credit per employee is still limited to 2/3 the employee's regular rate of pay up to a maximum of \$200 per day for all reasons for leave, including the new leave reasons related to immunization or testing and reasons that qualify for a \$511 per day cap when the wages are paid under the paid sick leave provisions.

Under the Rescue Plan, employers are disqualified from receiving FFCRA payroll tax credits if they:

- Fail to comply with the FFCRA, including its anti-retaliation provisions; or
- Discriminate in favor of highly compensated employees, full-time employees, or employees on the basis of employment tenure with respect to leave.

### **Extending Unemployment Insurance Benefits**

The Rescue Plan also extends unemployment assistance to individuals who become unemployed or are unable to work due to COVID-19, including:

- Extending the Pandemic Unemployment Assistance Program to provide unemployment benefits to individuals who are ineligible for regular or extended benefits under state law (e.g., self-employed individuals, independent contractors, workers with limited work history) for a total of 79 weeks through September 6, 2021;
- Extending the Federal Pandemic Unemployment Compensation program, providing both individuals who regularly qualified for unemployment benefits and those who qualify for PUA \$300 per week of unemployment until September 6, 2021;
- Extending the Emergency Unemployment Compensation program, which will provide federal funding for up to 53 weeks of additional unemployment benefits until September 6, 2021; and
- Exempting the first \$10,200 of unemployment benefits from federal income taxes for household gross income of less than \$150,000.

If you have questions about the Rescue Plan and how it impacts your workplace, please contact your Miller Canfield attorney or the authors of this alert.