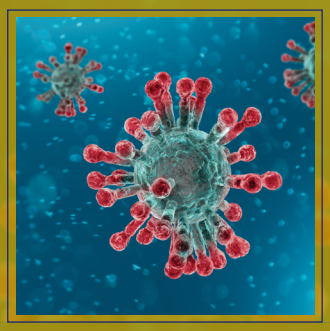

NECA Legal Alert

Overview of Employment and Benefits Provisions in the American Rescue Plan of 2021

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

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President Biden signed the American Rescue Plan Act of 2021 ("ARPA") into law on March 12, 2021 containing approximately $1.9 trillion in stimulus funding to counter the ongoing economic impact of the COVID-19 pandemic. ARPA includes several employment-law provisions that extend or increase existing employer obligations and worker entitlements. ARPA also contains provisions intended to provide relief to distressed pension plans.

ARPA is the most recent in a string of legislative actions to address the COVID-19 pandemic. This document provides an overview of the employment and employee benefit related provisions in ARPA.

Six-Month COBRA Subsidy

Effective April 1, 2021 through September 30, 2021 employers will be required to offer a full subsidy for continued coverage health insurance premiums under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"). COBRA allows individuals to retain coverage under their employer's (or former employer's) health insurance for up to 18 months if the coverage loss is due to involuntary termination or a reduction in work hours. Under the ARPA rules, the employer must pay 100% of the cost of COBRA premiums for up to six months. The ARPA rule does not extend the period of COBRA entitlement – if an individual's COBRA period ends on July 1, 2021, then the employer is only responsible for paying 100% of the premiums from April through June.

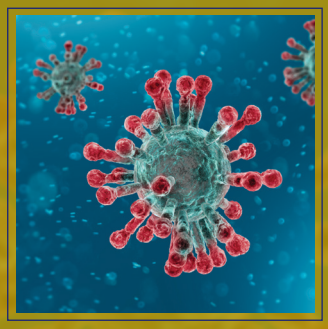
Although ARPA requires employers to initially cover the costs of the premiums, the federal government will provide a payroll tax credit to reimburse the employer for the cost of the subsidy. Updated or revised COBRA notices will be required as well and the Departments of Labor and Treasury are expected to provide further guidance and clarification to employers, including model notices.

Extension of Voluntary Paid Leave Programs

The first pandemic-related employment legislation was the Families First Coronavirus Response Act ("FFCRA") which established emergency paid leave for workers impacted by COVID-19. Under the FFCRA, employers with fewer than 500 employees were required to provide emergency paid sick leave ("EPSL") and emergency paid leave under the Family and Medical Leave Act ("EFMLA") in exchange for a refundable tax credit. This requirement expired at the end of 2020, but employers could voluntarily continue to offer EPSL and EFMLA in exchange for tax credits through March 31, 2021, as long as they offer this leave in a non-discriminatory manner.

ARPA extends and expands voluntary leave programs under FFCRA in the following ways:

- Extends employers' ability to voluntarily offer EPSL and EFMLA in exchange for refundable tax credits through September 30, 2021.
- Expands the list of reasons for taking any leave under the FFCRA to include: (1) employees receiving a COVID-19 vaccination; (2) recovering from an injury, disability



or illness related to receiving a COVID-19 vaccination; and (3) employees waiting on results of a COVID-19 test (because of exposure or employer requirement).

- Increases the length of paid EFMLA leave to 12 weeks by eliminating the requirement that the first two weeks are unpaid. The cap on payroll tax credit was correspondingly increased from $10,000 to $12,000.
- Resets the starting date of qualifying EPSL leave to March 31, 2021. As such, if an employee exhausted ESPL leave before March 31, the employee would be eligible for EPSL again after March 31. (There is no carry-over of unused leave.)

Unemployment Insurance

The Coronavirus Aid, Relief and Economic Security ("CARES") Act was another COVID-19 relief package that established several pandemic-related unemployment insurance programs. The major programs include: (1) Pandemic Emergency Unemployment Compensation ("PEUC"), an eligibility extension for existing unemployment insurance benefits; (2) Pandemic Unemployment Assistance ("PUA"), providing assistance to workers who would not otherwise be eligible for unemployment benefits; and (3) Federal Pandemic Unemployment Compensation ("FPUC"), a weekly benefit of $600 paid in addition to other unemployment compensation. The Consolidated Appropriations Act of 2021 extended FPUC at a reduced rate of $300, extended PUA and PEUC programs through March 14, 2021, and created a fourth program, Mixed Earner Unemployment Compensation ("MEUC"), for individuals whose income is derived in part from an employer's wages and in part from self-employment.

ARPA includes the following modifications to the unemployment assistance programs:

- **PEUC** – Extends PEUC benefits to up to 53 weeks through September 6, 2021
- **PUA** – Individuals can receive up to 79 weeks of PUA benefits (86 weeks in states with high levels of unemployment) through September 6, 2021.
- **FPUC** – Extends the $300 weekly benefit as provided under the Consolidated Appropriations Act of 2021 is extended through September 6, 2021.
- **MEUC** – Extends the program through September 6, 2021.

Employee Retention Programs and Incentives

The CARES Act included programs designed to assist financially distressed employers to avoid business closure or workforce reduction. Short-Time Compensation ("STC") programs permit employers to reduce workers' hours instead of layoffs and allow those workers to receive pro-rated unemployment benefits. Employers must receive approval from a state workforce agency before taking advantage of an STC program. The CARES Act provided 100% reimbursement to states who pay benefits through such programs, and ARPA extends the reimbursement through September 6, 2021.

ARPA also extends payroll tax credits designed to incentivize employers impacted from government orders or the pandemic to keep employees on the payroll. The CARES Act allowed for up to $5,000 in payroll tax credits per employee for 2020, and the Consolidated Appropriations Act of 2021 expanded the credit though June 30, 2021 and up to $7,000 per employee per quarter. ARPA extends the tax credits though the end of 2021 and expands the applicability to recovery startup businesses and severely financially distressed employers.

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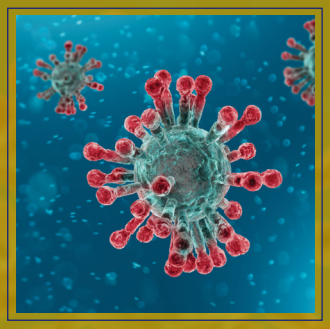

Pension Assistance

ARPA provides significant relief to single and multiemployer pension plans. The stimulus package provides direct financial support for certain underfunded multiemployer pension plans and relief from several minimum funding rules for both multiemployer and single-employer plans.

For single-employer plans, ARPA provides relief from minimum funding regulations related to amortization and funding-stabilization segment rates. ARPA expands the amortization period of funding shortfalls arising under the minimum funding requirements of both the federal tax code and the Employee Retirement Income Security Act (ERISA), also ARPA modifies the segment rates used in actuarial assumptions for single-employer plans to allow for continued smoothing of interest rates.

For multiemployer plans, ARPA provides relief from minimum funding regulations and direct financial assistance. Multiemployer plans can delay their funding status, extend their funding target period, and segregate some losses over a longer period of time. More significantly, eligible underfunded plans will receive an estimated $86 billion in direct financial assistance to shore up pension obligations through 2051. ARPA is silent as to the effect of the assistance on employer withdrawal liability; however, it is possible that the Pension Benefit Guaranty Corporation will issue guidance directing plans to calculate withdrawal liability without respect to any financial assistance received under ARPA.

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