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Benefit Plan and FFCRA Provisions of the American Rescue Plan of 2021

The latest COVID-19 relief bill, the American Rescue Plan Act of 2021 (ARPA), recently passed Congress and has been signed by the president. Among other things, ARPA establishes: (i) a short-term COBRA premium subsidy and additional COBRA enrollment rights for employees (and their dependents); (ii) a temporary increase in the maximum DCAP (a dependent care FSA) election; and (iii) an extension of the Family First Coronavirus Relief Act (FFCRA) tax credit for certain COVID-19 related leave. Here are highlights of the above provisions:

COBRA Subsidy

Premium Subsidy. ARPA establishes a 100% COBRA premium subsidy for certain "assistance eligible individuals" (AEIs) during the period beginning on April 1, 2021 and ending on September 30, 2021. An AEI is a COBRA qualified beneficiary who is eligible for COBRA due to an involuntary termination or reduction of hours and elects COBRA for a period of coverage. The employer will pay 100% of an AEI's COBRA premium during that time period and will be reimbursed by the federal government through a credit against payroll taxes or, for credit amounts exceeding payroll taxes, as a refund of an overpayment. The subsidy ends early for AEIs who reach the end of their COBRA maximum coverage period or who become eligible for coverage under Medicare or another group health plan.

Note that an AEI who was entitled to and elected COBRA prior to April 1 (due to an involuntary termination or reduction in hours) could enjoy the subsidy for the period of COBRA coverage beginning with April 1. For example, if Susie Smith is eligible for and elects COBRA effective November 1, 2020 due to an involuntary termination, and she remains on COBRA as of April 1, 2021, she would have to pay her COBRA premium from November 1, 2020 through March 31, 2021, but would be entitled to the subsidy from April 1 to September 30, 2021 (assuming she remains eligible throughout the subsidy period).

Extended Election Period. In addition to the subsidy, APRA offers a new enrollment right for individuals who had an involuntary termination or reduction of hours within the last 18 months but did not elect COBRA or dropped COBRA. These individuals may elect COBRA during the period beginning on April 1, 2021 and ending 60 days after they are provided required notification of the extended election period. COBRA coverage elected during the extended election period will begin with the first monthly (or shorter) period of coverage beginning on or after April 1, 2021 and may not extend beyond the AEI's original maximum coverage period. Using the above example, this means if Susie became eligible for COBRA on November 1, 2020 due to an involuntary termination or reduction in hours but declined COBRA coverage, and assuming Susie hasn't become eligible for Medicare or other employer coverage, she could now elect COBRA beginning April 1, 2021 to take advantage of the COBRA subsidy.

Plan Enrollment Option. The Act also creates a "plan enrollment option," under which a plan may (but is not required to) permit AEIs to elect a different coverage option. An AEI would have 90 days after notice of the enrollment option is provided to make the election. The different coverage cannot have a premium that exceeds the premium for the individual's existing coverage.

Notices. Group health plans must timely notify AEIs who become entitled to elect COBRA during the subsidy period of the subsidy's availability and the option to enroll in different coverage (if permitted by the plan). This notice obligation can be met by amending existing notices or by providing the required notices in a separate document. Plan administrators must notify AEIs who are eligible for an extended election period by May 30, 2021. In addition, plans must notify AEIs of their subsidy's expiration between 45 and 15 days before the expiration date, unless the subsidy is expiring because the AEI has become eligible for coverage under another group health plan or Medicare. Specific notice content requirements apply, and the DOL is directed to issue model notices for initial subsidy notifications within 30 days of enactment and a model expiration notice within 45 days of enactment.

Employers, insurers, and administrators will need to implement the COBRA provisions in this legislation on very short notice, as subsidies are to be available beginning April 1, 2021. The DOL's release of model notices and further guidance will be helpful, particularly regarding how the subsidy interacts with the extension of COBRA deadlines due to the COVID-19 outbreak period. Implementation of these subsidy provisions in such a short period will be challenging, and you may want to contact your COBRA administration vendor to discuss the process.

DCAP Changes

The maximum amount of DCAP benefits that can be excluded from income is temporarily increased from $5,000 to $10,500 (from $2,500 to $5,250 for taxpayers who are married filing separately) for 2021. Plan sponsors can choose whether to implement this provision and plans can be amended retroactively for the change so long as the amendment is adopted by the last day of the plan year in which the amendment is effective and the plan is operated in accordance with the amendment's terms beginning on its effective date.

Credits For Paid Sick And Family Leave

ARPA extends the tax credits that originated in the Families First Coronavirus Response Act (FFCRA). The FFCRA requirement to provide paid leave expired on December 31, 2020, but for employers who voluntarily continued to allow employees to take unused FFCRA leave after December 31, 2020, the Consolidated Appropriations Act, 2021 extended the credit through March 31, 2021. ARPA similarly further extends the tax credit to leave provided through September 30, 2021. (Note that ARPA does not mandate that employers continue to provide FFCRA leave in 2021; rather, if employers voluntarily choose to provide FFCRA leave through September 30, 2021, a tax credit is available to offset the cost of such leave).

Some specifics regarding this provision:

- ARPA's extension applies the available tax credit to Medicare taxes rather than Social Security taxes;
- ARPA restarts the 10-day limit on the amount of qualified sick-leave wages taken into account with respect to any employee (meaning that for an employee who has already exhausted the original 10 days of FFCRA emergency paid sick leave, the employer could offer an additional 10 days and receive a tax credit for the cost of such leave);
- ARPA increases the aggregate maximum credit for qualified family leave wages to $12,000 (to accommodate the additional 10 days of leave that can be allowed);
- ARPA adds a nondiscrimination requirement, i.e., an employer cannot claim a tax credit if it discriminates in favor of highly compensated employees in granting voluntary FFCRA leave;
- Permits the FFCRA tax credit to be claimed by employers who provide paid time off for employees to obtain the COVID-19 vaccination or recover from an illness related to immunization;
- Allows state and local governments to claim the tax credit for FFCRA leave granted from 3/31/21 to 9/30/2021.

Please visit www.moreton.com/news-events/ for more information and to view other client alerts. This Client Alert was written by Carolyn Cox, who provides our clients with compliance services. For additional questions, please contact Carolyn at 801-715-7110 or ccox@moreton.com.