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ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[Connie Elder Carrigan](#) is an accomplished attorney with a passion for helping clients, individuals, employers, and business representatives in planning for their future - from creating initial documents for a new company to advising on compensation, harassment, discrimination, and employment agreements - to estate planning and trusts and estate administration, Connie advises clients with shrewdness and prudence backed by over three decades of experience.

Never Fear, The American Rescue Plan Is Here

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The Biden administration has hit the ground running with several items on its agenda which impact the employment relationship. On March 12, the American Rescue Plan was passed by Congress and signed into law. This new law provides \$1.9 trillion in economic relief, much of which directly impacts employers.

By way of background, the tax credits offered to covered employers who voluntarily provided emergency sick leave and emergency family and medical leave to their workers under the federal Families First Coronavirus Response Act (FFCRA) were set to expire on March 31, 2021.

The American Rescue Plan:

- Extends the tax credits available for employers who voluntarily provide FFCRA leave from March 31, 2021, to September 30, 2021.
- Expands the parameters for the provision of such tax credits by including several additional qualifying circumstances under which paid sick leave and paid family leave may be provided:
 - The employee is obtaining a vaccination related to COVID-19
 - The employee is recovering from any disability, injury, illness or condition related to such vaccination; or
 - The employee is seeking or awaiting the results of a diagnostic test or medical diagnosis for COVID-19, or their employer has requested such a test or diagnosis.
- Adds non-discrimination rules to provide that no tax credit is available if the employer, in determining availability of the paid leave, discriminates against highly compensated employees, full-time employees, or employees on the basis of tenure with the employer. This provision appears to be designed to compel employers who make the decision to voluntarily provide leave to do so in a uniform manner.
- Provided \$1,400 stimulus checks for many Americans

The provisions contained in the American Rescue Plan include funding for small businesses, with a focus on hard-hit industries such as restaurants and bars. The new

legislation provides \$25 billion for a new Small Business Administration program focused on supporting food and drinking establishments. These grants offer up to \$10 million for eligible businesses to use for payment of expenses such as payroll, mortgage, rent, utilities, and food and beverage inventory.

The bill provides an additional \$7 billion for the Paycheck Protection Program and \$15 billion for the Economic Injury Disaster Loan (EIDL) advance program designed to provide economic relief to businesses currently experiencing a temporary loss of revenue due to COVID-19. Priority funding for this purpose is allocated to businesses with less than 10 employees. In addition, the legislation provides additional funding under the Shuttered Venue Operators Grant (SVOG) program, which had appropriated \$15 million in the December 2020 stimulus package for live venue operators.

The American Rescue Plan increases and further extends emergency enhanced unemployment benefits originally provided under the CARES Act in the amount of \$300 per week through September 6, 2021. The Act also contains a provision making the first \$10,200 in unemployment compensation received in 2020 non-taxable for households with incomes of less than \$150,000. Employers in certain industries can expect to continue to encounter obstacles in the hiring process in the interim period.

The American Rescue Plan expands three tax credits:

- The child tax credit is increased from \$2,000 per child under age 17 to \$3,000 for those ages six through 17 and to \$3,600 for those under age 6. New thresholds for phasing out the tax credit apply, and another key provision makes the tax credit fully refundable.
- The earned income credit for lower-income taxpayers has been expanded.
- The employee retention credit has been extended through December 31, 2021, and is expanded to include certain start-up businesses that otherwise would not have qualified before the passage of the new legislation.

The new law also provides for a 100% COBRA premium subsidy effective from April 1, 2021, through September 2021 for employees who are involuntarily terminated and who wish to remain on their employer's health insurance. The employer would pass along the subsidy so that qualifying individuals would pay nothing for their COBRA coverage during this period. The American Rescue Plan further provided stop-gap assistance to multiemployer pension plans, the details of which are beyond the scope of this article.

The American Rescue Plan did not include provisions for the inclusion of paid leave for employees needing to be absent for COVID-19 reasons despite the Biden administration's efforts to include such provisions. However, it is anticipated that future legislation will include proposals to extend and expand paid leave in a number of scenarios, including the American Families Plan proposed on April 28 which would provide 12 weeks of paid leave under a variety of scenarios. In addition to the American Families Plan, Congress is considering the FAMILY Act, a proposal that would offer wage replacement for FMLA reasons with coverage extended to all employers and would be administered by a newly created federal agency. The Biden Administration has also stated its intention to pass legislation that would increase the minimum wage to \$15 an

hour – federal employees just received this minimum wage increase — and to perhaps eliminate the tip credit. It is imperative that employers stay apprised regarding these fast-moving developments.

If you have questions about this new legislation or any other [employment law](#)-related matter, please call [Connie Carrigan](#) at (919) 250-2119 or e-mail her at ccarrigan@smithdebnamlaw.com.

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