

Congress Passes American Rescue Plan: What Employers Need to Know

Law and the Workplace Blog on **March 10, 2021**

On March 10, 2021, Congress passed the [American Rescue Plan Act of 2021](#) (“Rescue Plan”), a \$1.9 trillion COVID-19 relief package intended to provide continued economic relief to individuals, businesses, and state and local governments during the COVID-19 pandemic. President Biden is expected to sign the bill into law. The following is a summary of the key employment provisions in the Rescue Plan:

FFCRA Tax Credit Extension

The Rescue Plan extends the [Families First Act Coronavirus Response Act’s](#) (“FFCRA”) tax credit provisions through September 30, 2021. However, as has been the case since January 2021, covered employers (those with fewer than 500 employees) are not required to provide FFCRA leave to employees – rather, employers can choose whether to provide FFCRA leave to employees and obtain tax credits to offset certain costs associated with providing the leave.

The Rescue Plan also makes certain modifications to the FFCRA, all of which are effective on April 1, 2021:

1. **Covered Reasons for Sick Leave:** In addition to the [six reasons](#) for leave set forth in the FFCRA, employers will also receive tax credits for providing leave to employees who are: (i) obtaining an immunization related to COVID-19 or recovering from any injury, disability, illness or condition related to such immunization; or (ii) seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19, when such employee has been exposed to COVID-19 or the employer has requested such test or diagnosis.
2. **Reset of Paid Sick Leave Clock:** With respect to employees who previously took 10 days of emergency paid sick leave under the FFCRA, the Rescue Plan permits an employer to provide such employees with an additional 10 days of leave.

3. **Emergency Family and Medical Leave Tax Credit Expansion:** Previously, tax credits taken by employers to cover the cost of providing emergency FMLA leave was only available if the employee was unable to work (or telework) to care for their child whose school or place of care has been closed or was unavailable due to the public health emergency. Now, employers may claim tax credits for emergency FMLA leave arising from any of the reasons set forth in the FFCRA (including the two expanded reasons described above). The Rescue Plan also removes the two week waiting period on emergency FMLA leave and raises the aggregate cap on emergency FMLA leave from \$10,000 to \$12,000.
4. **Non-Discrimination Rules:** The Rescue Plan includes new non-discrimination rules for employers that opt to voluntarily provide FFCRA leave and obtain the tax credits. Specifically, the Rescue Plan disallows the tax credits for any employer who discriminates with respect to leave: (1) in favor of highly compensated employees (as that term is defined in Section 414(q) of the Internal Revenue Code); (2) in favor of full time employees; or (3) on the basis of employment tenure.

The law directs the Department of Labor to issue regulations or other guidance regarding these changes. We will provide updates as additional information becomes available.

Unemployment Insurance

The Rescue Plan also extends the unemployment benefits that were available under the [March 2020 Coronavirus Aid, Relief, and Economic Security Act \(the “CARES Act”\)](#) and the [December 2020 Consolidated Appropriations Act](#), both of which were set to expire after March 14, 2021.

Unemployment Benefits under the CARES and Consolidated Appropriations Acts

As a reminder, through the CARES Act and the Consolidated Appropriations Act, Congress expanded existing unemployment insurance benefits and created new UI benefits, including through the following three programs: (1) Federal Pandemic Unemployment Compensation (“FPUC”); (2) Pandemic Emergency Unemployment Compensation (“PEUC”); and (3) Pandemic Unemployment Assistance (“PUA”). Under the December 2020 Consolidated Appropriations Act’s amendments to the CARES Act:

- **FPUC** provided a supplemental \$300 weekly benefit for each week of unemployment between December 26, 2020 and March 14, 2021.

- **PEUC** provided for up to 24 weeks of additional unemployment benefit eligibility, available through March 14, 2021, for individuals who had exhausted unemployment benefits otherwise available under state law.
- **PUA** extended unemployment benefits to certain workers traditionally not eligible for unemployment benefits under state law, such as individuals who are self-employed, independent contractors, and workers who have a limited work history. These benefits were available through March 14, 2021. Under the Consolidated Appropriations Act, the duration of PUA benefits for eligible workers was extended to a total of up to 50 weeks.

The CARES Act and the Consolidated Appropriations Act also provided incentives for states to waive waiting periods for benefits and encouraged the use of state short-time compensation (“STC”) programs. For more information about these programs, see our previous posts, [here](#) and [here](#).

Unemployment Benefits under the American Rescue Plan

The recently-passed Rescue Plan extends each of the three programs described above through Labor Day (September 6, 2021), and makes the following changes to the programs:

- **FPUC:** The Rescue Plan provides for a supplemental weekly benefit of \$300 per week for each week of unemployment between March 14, 2021 and September 6, 2021. This is the same supplemental benefit amount that was previously provided under the Consolidated Appropriations Act.
- **PEUC:** The Rescue Plan extends PEUC by providing for up to 53 weeks of additional unemployment benefits to eligible individuals who have exhausted the unemployment benefits available under state law. Before the CARES Act, many states capped the duration of regular unemployment benefits at 26 weeks. The CARES Act provided for an additional 13 weeks of benefits under PEUC, and the Consolidated Appropriations Act provided for up to 24 weeks of additional PEUC benefits. With the latest extension under the Rescue Plan, eligible recipients of UI benefits in many states can now receive up to 79 weeks of benefits.
- **PUA:** The Rescue Plan provides eligible individuals up to 79 weeks of PUA benefits, an extension from the 50 weeks of benefits provided previously under the Consolidated Appropriations Act (under the CARES Act, the duration of benefits was 39 weeks).

Although unemployment benefits are taxable, the Rescue Plan waives federal taxes on the first \$10,200 of unemployment benefits that an individual collected in 2020. Notably, however, this tax suspension only applies to taxpayers whose adjusted gross income in 2020 was less than \$150,000.

The Rescue Plan also extends other CARES Act provisions through September 6, 2021, including the incentives for states to waive waiting periods and encourage the use of STC programs. The Rescue Plan further creates greater incentive for states to waive waiting periods for unemployment benefits than the Consolidated Appropriations Act because benefits paid during a waived waiting period will now be 100% federally funded, as opposed to the 50% funding provided for under the Consolidated Appropriations Act.

The federal government may issue updated guidance to address the implementation of these unemployment provisions in light of this new legislation. Employers should monitor state websites for any applicable unemployment programs and up-to-date guidance. We will continue to monitor these development and inform our readers of any new guidance in this area.

Employee Benefits Issues

Please visit our [Employee Benefits & Executive Compensation Blog](#) for more information about the [pension reform](#) and [COBRA](#) aspects of the Rescue Plan.

* * *

Subscribe to Proskauer's [Law and the Workplace](#) blog to stay current on the latest [Biden administration developments](#) impacting your business. Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns.

Visit our [Coronavirus Resource Center](#) for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

[View Original](#)

[Related Professionals](#)

- **Evandro C. Gigante**

Partner

- **Allison L. Martin**

Senior Counsel

- **Jacob P. Tucker**

Associate

- **Julia F. Hollreiser**

Associate