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The Solution Starts Here.

Tax Credits for Voluntary Employer-Paid Sick and Family Leave Expanded and Extended through September 30th Under the American Rescue Plan Act of 2021

On Thursday, March 11, 2021, President Biden signed the American Rescue Plan of 2021 into law. After several modifications by the House and Senate, the final version of the American Rescue Plan includes an extension of the tax credits for employer-paid sick leave and family leave through September 30, 2021. In general, this extends the ability of employers to claim tax credit originally provided under the Families First Coronavirus Response Act (FFCRA) after the current March 31, 2021 deadline if the employers voluntarily provide paid sick leave and family leave, but it does not mandate employers to provide the paid sick leave or family leave.

For employers who choose to offer the paid sick leave and family leave, instead of a credit against the 6.2% employer share of Social Security tax (up to annual wage caps) imposed under Code Section 3111(a), which was authorized under the original and previously amended versions, the current Plan would allow a tax credit against the 1.45% employer share of Medicare tax (without any annual wage cap) imposed under Section 3111(b). The American Rescue Plan also makes state and local government units eligible for the tax credits for paid sick leave or family leave where they were previously ineligible.

The American Rescue Plan allows for an employer to obtain tax credits for up to an additional 10 days of paid sick leave taken after April 1, 2021 and before September 31, 2021, even if an employer obtained the maximum amount of tax credits and an employee previously exhausted paid sick leave or family leave days allowed under the FFCRA as of March 31, 2021. Essentially, employers can “refresh” their employees’ paid sick leave banks (but not paid family leave banks) and receive tax credits for the additional 10 days of paid sick leave used between April 1 and September 31.

The new law also expands eligibility for paid sick leave and family leave. Additional reasons have been added to the original six reasons under which employees previously could obtain paid leave pursuant to the FFCRA (summarized in our prior client alert here). The additional reasons that would allow an employee to qualify for paid sick leave and paid family leave and therefore would allow an employer to qualify for tax credits if the employer voluntarily chooses to provide the paid leave include:

- The employee is seeking or awaiting the results of a diagnostic test, or medical diagnosis of, COVID-19 and such employee has been exposed to COVID-19 or the employer has requested such test or diagnosis.
- The employee is obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to such immunization.

Additionally, the aggregate amount of wages for which tax credit can be claimed for family leave was increased to \$12,000 from \$10,000. This accounts for the change that the first 10 days of the twelve weeks of family leave are no longer required to be an unpaid waiting period. Significantly, the emergency family leave may now be taken for all six reasons previously available under the paid sick leave provisions (EPSL), as well as the two additional reasons outlined above.

Finally, with respect to paid sick and family leave, the new law also adds a discrimination provision related to eligibility for the tax credits, which requires employers not discriminate with the leave in favor of highly-compensated employees, full-time employees, or based on employee tenure.

In short, there is no mandatory requirement for employers to provide additional paid sick or family leave, and employers can consider their operational needs when determining whether to provide paid sick or family leave. If an employer chooses to continue the leave from 2020 or provide additional paid sick leave beginning April 1, 2021, the employer can claim tax credits for that leave. If an employer will be offering paid COVID-19 leave and wishes to claim tax credits for the paid leave as of April 1, 2021, it will be important to maintain proper documentation as required by the IRS. The new legislation also gives the IRS five years from the tax return filing date to audit claimed tax credits. In addition, employers wishing to take advantage of tax credits should review and revise their policies to include the changes described above, such as additional reasons for leave, increased aggregate amount of wages for family leave, and indicating the first 10 days of family leave are no longer required to be unpaid.

If you have questions about how these or other changes effected by the American Rescue Plan Act will impact your business or organization, please contact or Lauren Burand, at 262-364-0258 or lburand@buelowvetter.com; Claire Hartley, at 262-364-0260 or chartley@buelowvetter.com or your Buelow Vetter attorney.