

The American Rescue Plan and its Impact on Employee Benefits

By Morris L. Hawk

The American Rescue Plan (“ARP”), signed by President Biden on March 11, 2021, includes several significant provisions related to employee benefits, most of which extend far beyond pandemic-related relief. Here is a summary of some of the most significant provisions.

COBRA Subsidy and Tax Credit

The ARP subsidizes 100% of COBRA premiums for individuals who lose coverage due to involuntary termination of employment or a reduction in hours. The subsidy will be in effect beginning on April 1st through September 30, 2021 (the “subsidy period”). An individual is eligible for the subsidy if the individual: 1) suffers an involuntary termination of employment or reduction in hours during the subsidy period; 2) is already on COBRA coverage and that coverage will continue during any portion of the subsidy period; 3) was eligible for but declined COBRA coverage and would have otherwise been covered during the subsidy period; or 4) elected coverage and then terminated it, but would have otherwise been covered during the subsidy period. The subsidy does not extend the normal COBRA coverage period.

The law requires the distribution of a notice to those who previously declined or ended coverage and directs the DOL to issue a model notice within the next 30 to 45 days. Employers will need to make sure that their standard notices are revised to inform eligible individuals of the subsidy.

Self-insured employers will be responsible for initial payment of the premium but will then be entitled to a credit in the amount of the subsidy against their quarterly payroll tax payment. For full-insured plans, insurers are expected to cover the cost and file for the tax credit.

Dependent Care Flexible Spending Account Increase

Employers may choose to allow employees to contribute up to \$10,500 to a Dependent Care Flexible Spending Account (FSA) for 2021. Any necessary plan amendments would need to be made by December 3, 2021.

Multiemployer Pension Plan Relief

The ARP literally rescues struggling multiemployer pension plans. The law will provide a direct transfer of federal funds into any multiemployer pension plan: 1) that is currently in critical and declining status or certified to be in such status in plan years 2020 through 2022; 2) has previously been approved to suspend benefits due to its financial status; or, 3) has been declared insolvent after December 16, 2014

but has not yet been terminated. All plans meeting these requirements will, upon application to the PBGC, receive a direct lump sum transfer of federal funds sufficient to fully fund participant benefits for the next thirty years (through 2051). The law expressly provides that a plan receiving funds that previously suspended benefits to participants must restore those benefits retroactively to participants in either a lump sum payment to those participants or installment payments over five years.

The law directs the PBGC to issue regulations detailing the application process for eligible pension plans within the next 120 days. The law also provides that the PBGC may impose reasonable conditions on the plans including future accrual rates, employer contribution rates, and withdrawal liability. These last two issues will be critical to employers who currently contribute to these plans. Although the law requires that plans segregate the federal funds from other plan assets, the federal funds must themselves also be considered plan assets as there will be no obligation to repay them and they will be dedicated to paying plan benefits and expenses. Thus, we hope that the PBGC will consider the impact of these funds upon the future financial viability of the plans, particularly as it relates to the calculation of an employer's withdrawal liability.

Expansion of Covered Employees under Section 162(m)

For publicly traded companies, the ARP expands those employees subject to the annual \$1 million deduction limit on compensation under Section 162(m) beginning in 2027. Currently, Section 162(m) disallows a tax deduction for any compensation over \$1 million dollars to a "covered employee", which is defined as the CEO, CFO and the three other highest compensated employees of a company, as well as any employee that was subject to 162(m) in any subsequent tax year. Beginning in 2027, the ARP expands the definition of "covered employee" to include the five highest compensated employees for any compensation over \$1 million dollars. Publicly traded companies may want to review their current deferred compensation agreements considering the future expansion of Section 162(m)'s coverage.

Single Employer Plan and Community Newspaper Plan Funding Changes

Finally, for single-employer plans, the ARP increased the amortization period for funding shortfalls from 7-15 years and modified rules for minimum funding standards for community newspaper plans.

Roetzel will continue to monitor developments in this area and provide updates on the revised COBRA notices and IRS and PBGC guidance. For more information and insight on these matters, please contact one of the listed Roetzel attorneys.

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