

# The American Rescue Plan's employer impact

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One of President Biden's initial signature pieces of legislation - The American Rescue Plan Act of 2021 - creates a significant number of changes to or continuations of programs that were available to both businesses and employees during 2020. While there is a wide array of tax and other elements of the new law, three employee benefits matters need to be incorporated into your HR planning.

## 1. Extension of pandemic unemployment assistance, Section 901(1)

This paragraph will increase the time period that the extended unemployment relief is made available to employees who are laid off or have lost their positions due to COVID-19. Previously set to expire in March, the extension will now run through September 6, 2021. There are two main facets to this section:

1. Extends the number of weeks which individuals can receive benefits from 24 to 53
2. Provides some safe harbors for accidental overpayments which have already occurred. Enforcement of accidental payments has been done on a state-by-state basis with states having varying approaches and results.

Benefits are also made available for the first week of unemployment in those states that do not make benefits immediately available. Also note, beginning in 2020, if the "adjusted gross income of the employee is less than \$150,000, the gross income for taxes shall not include ... unemployment compensation received by the taxpayer (or, in the case of a joint return, received by each spouse) that does not exceed \$10,200."

In other words, if you make less than \$150,000 a year, \$10,200 of unemployment compensation is nontaxable. See Section 904(2).

## 2. COBRA

Section 9501 also makes available certain premium assistance for those who qualify for the continuation of healthcare benefits under COBRA. Employers should note that the mandatory delivery of COBRA documentation is not considered sufficient under this law unless it includes an appropriate notice of "the availability of premium assistance with respect to such coverage under this subsection; and the option to enroll in different coverage..." where permitted by the employer. This requires that employers amend their COBRA documentation to include this mandatory notice. See this article by employer health benefits lawyer Susan Freed for additional information.

## 3. Paid sick and family leave credits

Part 5 of the law addresses “credits for paid sick and family leave.” The buckets of time that employees were allotted under the original FFCRA expired in December and were then subsequently extended to March 31, 2021. Those buckets did not “refill” with the original extension and many employees had already used all the allotted time. The American Rescue Plan extends the applicable time period for which employees may take paid family or sick leave to September 30, 2021.

It also increases the applicable wages for which employers can claim credit from \$10,000 to \$12,000 effective after March 31, 2021. Note that time off can now also include time off to receive a COVID-19 vaccine or recover from a vaccine reaction. It also resets the 10-day limitation on sick time after March 31, 2021. After that date, a new 10-day period is utilized by the employer for the purposes of obtaining the paid leave tax credit. The time does not “stack,” so if an employee had not previously used time, they do not have 160 hours. Note that this section, like the prior extension, **does not mandate** that leave be given or the relief program be used. It allows employers to do so permissively so long as they abide by the rules of the program and they can then utilize these tax credits.

## The big picture

The American Rescue Plan is a 242-page document with many impacts on U.S. American society, including these three specific employment-related impacts on employers. All employers should review their policies, procedures, and documentation to ensure compliance with the new rules.

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