



BEYOND THE MIC

with AEM



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Impacts of the American Rescue Plan Act (ARPA) on Human Resources

Hosted by Leah Davis, Tamara Hastings & Brenna Ramy

EPISODE

11

NOTE: Because of the nature of ever-changing human resources, payroll, and tax regulations, all information discussed herein is subject to change. Please reach out to us to discuss your organization's unique challenges so that we can provide you with up-to-date information and help you find the solutions.

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (ARPA). This new COVID relief bill had many important provisions for both individuals and organizations. In the HR realm, it brought changes to the Families First Coronavirus Response Act (FFCRA), Emergency Paid Sick Leave (EPSL), and some significant changes to COBRA.

In this new episode of Beyond the Mic, Tamara Hastings, Leah Davis, and Brenna Ramy will focus on how ARPA's provisions will impact businesses and organizations when it comes to these human resources topics. They discuss what you need to know, what you should be doing, and the conversations you should be having with your organization's leadership about these changes.

Meet the Hosts



Leah Davis, CPA

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As President of the AEM Workforce Solutions team, Leah uses her background in public accounting, business ownership, and Human Resources and payroll support to provide her team with a strong foundation of knowledge and experience. She enjoys helping clients grow and learn, no matter where they are in their HR journey.



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Brenna enjoys working with leaders to determine the most effective employment model to meet business needs and strategic direction. She has over fifteen years of Human Resources experience in the industries of hospitality, retail, multifamily housing, and consulting.



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Tamara brings over nine years of experience working closely with business leaders, managers, and employees in a wide variety of HR functions. She has also previously owned and operated her own small business and brings that experience and knowledge with her as she works with clients.

Episode Transcript

Tamara Hastings: Welcome back to the Beyond the Mic Podcast. I'm Tamara Hastings, a Senior Associate here at Abdo, Eick & Meyers on our Workforce Solutions team. Today I'll be talking with Leah Davis, President of our Workforce Solutions team, and also Brenna Ramy, Senior Manager on our team.

Today, what we're going to focus on is the American Rescue Plan Act of 2021, or ARPA as we'll call it throughout this podcast. As many of you know, on March 11th, ARPA was signed into law by President Joe Biden, and it includes several provisions that businesses need to be aware of. These include updates to FFCRA, emergency paid sick leave, or EPSL, and some major changes to COBRA.

What I don't want to talk about today are the details or the nitty-gritty of this law. What I do want to do is have a conversation about how these changes impact our businesses and how they impact us as HR professionals. What we need to know, what we need to be doing right now, and the conversations that we need to be having with our business leaders.

Leah, let's start with COBRA, again there were many changes there and a lot that we need to know. I know you've done a lot of research on this, so what do we need to know about the COBRA changes that were impacted by ARPA?

Leah Davis: Thanks, Tamara. For any of us who work through the 2008 economic fallout, some of this is going to feel like an ugly flashback when we talk about COBRA premium subsidies. One thing I think is important to note related to a lot of the items that we're going to be talking about today is they're really applicable to employers in a lot of different industries. So you've got businesses, but also nonprofits, and even some government employers while those public employers may not be eligible for some of the tax credits related to the FFCRA extensions that we're going to talk about, the COBRA premium subsidies, all of those things would apply to even those public employers as well.

So when we talk about COBRA we're talking about the option that employees have to continue benefits with their previous employer after employment has ended. This is really an administrative process that I think is a confusing area for a lot of employers. And stack on top of that, some of these new provisions and requirements that are coming out under the ARPA, the American rescue plan act. Basically, what the regulation states is, there will be a premium subsidy available, and it's beginning in April, and going through September of 2021. What that subsidy means is that employees who were involuntarily terminated, or had a significant reduction in hours, that changed their eligibility for benefits under their group plan. So if they lost coverage due to a reduction in hours, those COBRA premiums will be subsidized through the ARPA act.

Leah Davis (cont): What does that mean in real life? What it means is that by May 31st, and this is a required notice that's detailed in the legislation, employers will be required to send an updated notice to all eligible employees stating what their rights are for this COBRA premium subsidy under the ARPA act. Those notices are yet to be provided, but the Department of Labor will be coming out with those.

So employers need to one, start getting ready for these notices that are going to need to go out to any employees who were involuntarily terminated or lost coverage due to an involuntary reduction of hours, going all the way back to March of 2020. It's important to remember when we talk about eligible employees in the COBRA election window, it's usually about 60 days where employees get 60 days to elect after the end of their employment, if they qualify well. Under the very initial emergency legislation related to COVID in 2020, they really opened up the election window for these COBRA participants, and they've been able to elect COBRA indefinitely. So someone terminated in April of 2020, could still elect COBRA if they wished.

Now under this premium subsidy requirement, employers will need to identify all of those individuals going all the way back to 2020, send them these notices, letting them know they're eligible to elect COBRA, and that it will be free to them to continue their coverage under their employer plan. So employers need to expect one, there's going to be an administrative piece, two, in a lot of cases, employers see very low participation in COBRA because it's expensive for employees. Based on my experience, when we had similar situation like this in 2008, they're going to see a big uptick in elections for COBRA insurance, because employees aren't going to have to pay for it. So they need to be prepared for the administrative pieces that come along with that, and I think we're kind of waiting for more information on how some of these subsidies are going to be credited back, whether you're self insured or fully insured. So more to come on that but start getting ready for the notices.

Brenna Ramy: I have a quick question about this because I think a common question I'm getting from clients is a lot of the previous legislation had numbers of employees that either opted you in or out of certain legislations that were passed. And so I think a question I'd love to throw to you, is there a number of employee opt in or out? So essentially if I'm small enough or big enough, do I not have to participate in this? Or is this, if you employ anybody, you get to participate in this awesome legislation.

Leah Davis: I think from my understanding of this COBRA premium subsidy legislation is there's no employee threshold. If you, as an employer, have a group insured health plan that you're offering to employees, I believe you need to make this premium subsidy available. Now we'll watch for more guidance because there are thresholds for standard COBRA if you're under 20 employees, you don't have to offer COBRA coverage, and then there's different state legislation that might make it a little bit lower depending on which state you're operating in. But my initial read of this regulation, it appears to be silent on those thresholds. And so I think employers of any size that are offering group health care or COBRA eligible coverage needs, which would include dental vision, life insurance, need to be ready to comply with this subsidy and the notice requirements.

Tamara Hastings: Thanks for the great information. So Leah, if I'm an HR professional and my leadership team comes to me and says, Hey, I heard there are changes with COBRA. How can I explain the important pieces to them in just the few minutes that I have with them before they run off to their next meeting?

Leah Davis: I think just the main bullet points are the new legislation is intended to provide aid to employees that lost coverage due to COVID for whatever reason. So what it's allowing is for them to even retroactively elect benefit continuation coverage and subsidize the premium and the cost of that coverage. The obligation of the employer is going to be to notify employees of their rights, to make sure that they're properly administering any elections that might come after those notices, and that they understand how some of those subsidies and credits are going to flow through based on their specific plan set up. So I'm confident the department of labor will come out with guidance intended to make this as simple as possible for employers, but they need to be getting ready. How are we going to distribute this? How are we going to administer it? And they need to be checking regularly at the Department of Labor so they get that information ahead of time and are prepared to meet that May 31st deadline.

Tamara Hastings: So let's move on to FFCRA and EPSL, emergency paid sick leave, and Brenna, I'll come to you for this. I know there have been a lot of changes to FFCRA and EPSL. With this new act, what are some changes that we're seeing specific to this, that employers need to be prepared for?

Brenna Ramy: Thank you, Tamara. I'm excited I get to talk about FFC already again. So this is a little bit like COVID legislation. So just as a reminder, I think what we learned back in April of 2020 when FFCRA, that family's first legislation, very first piece of relief legislation that was passed. We learned that legislation has passed and oftentimes we get more information after and how to actually implement that. Because we've had that initial legislation for so long, we've all gotten used to knowing what to do with everything. But what we've learned from ARPA is we're a little bit back in that scenario again, that this is such a big piece of relief legislation, and there is a lot of information on what is going to happen and not exactly how it's going to happen yet. So COBRAs are a great example of that, that Leah was talking about, that we know what the legislation's intended to do and what the net subsidy is going to do, but we now have to wait for the regulatory agencies to give us the ABCs and one, two threes of how to actually implement that.

So as a reminder, family's first, FFCRA, when it initially came out in 2020, it covered two pieces of now paid leave. There was the emergency paid sick leave, EPSL, and then the emergency expanded FMLA that EEFMLA. Both of those for 2020 were required paid leave for employers under 500. We won't go down that rabbit hole today because we've talked a lot about that. It was extended in December, for the first extension. So it was scheduled to expire on December 31st and was extended for a period of time as voluntary. Now, it's been extended and essentially, it's a new piece of legislation. So it's FFCRA, that's kind of extended, kind of new, it's a weird combination.

Brenna Ramy:

So we have to wait for more information that goes into effect on April 1st. So for the purposes of today, just to keep our life simple, I'm going to talk about just what goes into effect on April 1st, not the previous two versions of it. So if you're interested in that, check out our website or read some of our previous pieces of information on that, we've got a lot of resources for you. So just for today, we're talking April 1st.

So effective April 1st and through September 30th of 2021, FFCRA has been extended as a tax credit available to employers. And that available to employers is important because it means that it's voluntary. So FFCRA had those two buckets of leave EPSL and EEFMLA. It's now continuing to be voluntary to participate in those. You can voluntarily participate in EPSL that paid sick leave. You can also voluntarily elect into EEFMLA and participate in that. And there's a couple of nuances on that and I'm not going to read the legislation because that's just not super exciting for all of you to listen to me again, and plus there's a lot of literature out there.

What I'm going to do is tell you the differences. I'm going to tell you what's different about this April 1st legislation than the two previous versions. The first difference is that you can participate as much as we understand today, all of the partners we've talked to, and in the first couple of weeks of it being out, we heard varying opinions on this, but I think universally, we're starting to hear the consistent one, which is you can elect which of those to participate in. So you could participate and offer just emergency paid sick leave. You could participate in offered, just emergency expanded FMLA. You could offer both. You could offer none. So there are variations. It's a little bit customizable, and that is a little bit of a change, some of what people originally interpreted as, and part of that is because your original FFCRA legislation did not give you an opportunity to make that choice. So when it was extended, you continue to not. So again, there's a couple of different versions of this. So big change now is that you have the option to decide what works for you.

The second option is that EEFMLA, that emergency expanded FMLA, under the first piece of legislation really covered primarily loss of childcare, right? So your child's school or place of childcare was closed. And they gave you 10 weeks of available time off. The first two weeks would be unpaid or at a lower rate of pay. But what they've done is have actually expanded that and you can now get 12 weeks of paid EEFMLA. This is major that this now includes COVID related reasons. So it's not just childcare, that's a major change. And it's honestly, in my opinion, one of the most major changes made from the original FFCRA legislation. That expanded FMLA, up to 12 weeks of leave, can now cover those first six reasons, not just the childcare one, so it can cover COVID symptoms, and you have to be quarantined. We're talking long haulers now. So all different things.

The other thing that it added on is that it also added in leave needs related to COVID vaccines. So if you need time off to get the COVID vaccine, that could be a paid tax credit. Or if you needed time off because you got the vaccine and you had an adverse reaction that will be covered as paid leave. So those are some of the changes related to it. There are a lot of great resources on the specific details of that. If you go to our COVID website, you can find that.

Brenna Ramy: When you were asking Leah earlier, Tamara, “so I’m an HR person and what should I do now?” Well, the first thing you should do is pour a cup of coffee, just have a minute, recognize that things are starting new. The first thing you need to know is if you haven’t read the legislation or a good recap of how it impacts FFCRA, you need to read it. It’s important to understand it because effective April 1st, those leave banks start over. So again, when we talk about those two previous versions, the initial version that was effective in March of 2020, and then the extension in December, all those leave banks that you had eligible to an employee, were one bank and were extended.

So effective April 1st, that will actually be a year since the original legislation, which is kind of mind blowing. Let’s all drink a cup of coffee to that, and then understand that that means on April 1st, those banks start over. So if you are electing to offer EEFMLA or EPSL, each employee has new banks.

Tamara Hastings: I’m really excited that I have some voluntary options here, right? We’re not required to provide this, but with those options cover some responsibility in making these decisions and working with my leadership team to make these decisions. And I can ask this of both of you, because I know we’ve talked about this in the past, but what are some considerations that I factor in what I’m trying to determine. Do I choose to provide any of these leave options? Which ones, how much, where do I go from here?

Leah Davis: So I think as I’m talking to employers about this, a really critical piece is for them to not just knee jerk or blanket react. I think some employers may have had difficult challenges with the initial FFCRA, the mandatory FFCRA leave in 2020. And what’s important for them to understand is that they now have the option to customize and tailor fit some of these benefit options, and the related tax credits to their organizations is again, as Brenna mentioned, what we’re kind of hearing. So I would encourage HR professionals to just stop, take a look at your workforce, ask yourself the question: if we have employees that have these needs, they’re sick, their family’s sick, they’re quarantined, they’ve lost childcare, they’re probably not going to be in the workplace anyway. We’re either going to be letting them use PTO and pay them for that, or they’ll be taking unpaid time. And I think employers need to ask themselves, can we customize our FFCRA offering for 2021 in a way that lets us both accommodate those employee needs, and still get those lucrative tax credits. If we’re going to be paying them anyway, why would we not do it under FFCRA and kind of get our money back? I think those are some important questions as well.

Brenna Ramy: I think we’ve all talked about how almost every piece of legislation that’s gone out for our own internal, and as our team has tried to get our hands and our minds around it. We often have a running list and have our running meetings of understanding, what do we know, who does it apply to, and what decisions do we have to make? Then what don’t we know yet and what don’t we know yet that we need to pay attention to, but that we should be at least thinking about the now. So if you know, you’re covered under COBRA in any previous version of your state or the federal version of it, the likelihood that you’re going to be covered, obviously under this new COBRA extension under ARPA. So start looking at a list of how many employees that are going to be getting that list together now, thinking about that, what steps am I going to take?

Brenna Ramy:

Do the work to get yourself ahead of the game on that, think about and understand what communication needs to go into my current employees. So if we're going to opt in or opt out of FFCRA effective April 1st, you will just want to have a clear communication with your organization. In addition, we see this happened a lot.

In fact, this is actually I think one of the things we see happen that causes the most, here's the word my mom says and it's called kerfluffle. You're welcome world. That causes the most kerfluffle within a team is they tell employees, they send out a communication to employees and say: here's the policy we're going to do. Whatever that policy is, in this case, we're either going to opt in or out of FFCRA. And then they don't have a follow-up either pre communication or post communication with their managers and say: what does this practically mean for you, with your employees? Because in most organizations, the managers are the ones getting the message from their employees saying, I'm home sick. I have this, I got a vaccine and I feel like crud today.

So yes, communicate, make those decisions. And then who are my managers or supervisors that I need to make sure understand what they're supposed to do with this from here, because that's where things go really right or really wrong in the real world that we see.

Leah Davis:

And two quick things: Employers also need to realize, we've talked all about how customizable it appears that this new FFCRA election can be, but two things that are still pretty lock-tight employers need to keep in mind. One, whatever they decide to do, that needs to be offered to employees equitably. So what you do for one, you must do for all. So they need to keep that in mind.

And then the other really important reminder that I would leave them with is while the what you offer in terms of leave can be, can be kind of customized. They need to expect that the IRS is still going to require the documentation of the credits at the level that they were requiring in 2020. So we can be flexible in the what we offer area, but make sure you still have your T's crossed and your i's dotted on the documentation of any leave that you expect to take a tax credit on.

Brenna Ramy:

And Leah, I want to add one more thing. You reminded me of one last addition they made to it that I almost forgot. The effective ARPA version of FFCRA, as we're kind of referring to it internally, they also added an anti discriminatory kind of sentence in bucket to this. Which is: does it discriminate. Interestingly, this isn't about title seven discrimination, of course that's included, but, this is about highly compensated or full-time employees or years of service. So you don't get to say, I'm going to offer the emergency extended FMLA to my top performing employee who's been here for 15 years and is irreplaceable, but I'm not going to offer it to new hires who have only been here for 30 days and I could find another person. You don't get to make it discrimination in that sense.

So this is a different type of discrimination I think most employers are thinking about, but it has to be applied that. So thank you for reminding me of that new addition that wasn't on the previous version, somebody tried it and that's how, you know it exists.

Tamara Hastings: Thank you so much, Leah and Brenna, for being here today and for talking with us about the implications and the takeaways of the American Rescue Plan Act. It's nice to just have a conversation about it and to walk away with the conversations that we need to be having with our leadership about this act and how to implement it.

Next month, we're going to be back and we're going to be talking about the technical side of remote work. So now that we have employees working remotely, how do we handle if they want to go work from their cabin for the summer or somewhere else, and what do we do on the technical side of that. So we're looking forward to that conversation and hope you'll join us next month for that. We will see you then.

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