



The 3 Most Significant Items For Employers In The Congressional COVID-19 Proposal – And The 3 Items Not (Yet) Included

Insights

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With just weeks to go before the expiration of many stimulus programs aimed at stemming the pain of the pandemic, federal lawmakers are hurriedly working on a compromise legislative proposal to provide another round of economic relief for businesses and workers alike. When a bipartisan group of House members and Senators unveiled their framework for a \$908 billion plan on December 1, the outline included several items of critical interest to employers. While the situation remains very fluid and changes are likely to take place before any such legislation is finalized, here is a current snapshot of the three most significant workplace law provisions included in the latest compromise proposal – and the three most significant items not (yet) addressed.

INCLUDED: Another Round Of Small Business Loans

The largest chunk of the proposed stimulus would fund another round of funding for the Paycheck Protection Program (PPP). According to the initial framework circulated last week, \$288 billion would be provided to offer additional assistance for small businesses. This new round of funding would allow employers that have already exhausted their PPP loans to apply for further payments. According to the Washington Post, businesses applying for this second round of federal loans “will almost certainly be required to demonstrate substantial declines in revenue to qualify for assistance.”

While details are still vague, it appears that Congress would single out restaurants as businesses especially deserving of economic protection in light of the numerous statewide and local public health orders forcing closure or other operational restrictions. Media reports also indicate that further relief could come by the way of Economic Injury Disaster Loans, a program that offers smaller loan amounts than the PPP system.

INCLUDED: Unemployment Aid

The framework also earmarks \$180 billion in unemployment insurance benefits to jobless workers. Rather than receiving a supplemental payment of \$600 per week as in the first round of additional UI funding, the current proposal calls for unemployed workers to receive an additional \$300 per week on top of state unemployment benefits for a period of 16 weeks. What remains uncertain is whether the benefits would cover the time in the past several months when unemployed workers were not being paid. According to media reports, the current compromise notes that the UI benefits would not be retroactive.

Perhaps complicating efforts, the White House unveiled a competing relief package on December 8 that proposes to slash unemployment relief from Congress's \$180 billion to just \$40 billion by eliminating any supplemental UI benefits. Instead, the plan released by Treasury Secretary Steve Mnuchin would offer stimulus checks worth \$600 per person and \$600 per child. The White House plan appears to be a "nonstarter" for Democrats and it remains uncertain whether elements of it could be folded into the bipartisan package.

The congressional proposal would also extend the Pandemic Unemployment Assistance program that, for the first time, offered certain UI benefits for self-employed and gig economy workers not otherwise eligible for such benefits.

INCLUDED: Temporary Liability Shield

It is the most controversial of all provisions in the proposal that remains the biggest sticking point in negotiations: whether Congress will temporarily shield employers from liability related to COVID-19-related lawsuits. The one-page framework released by the bipartisan working group notes: "provide short term federal protection from coronavirus-related lawsuits with the purpose of giving states time to develop their own response." According to reports, various lawmakers have proposed for a moratorium on such lawsuits for six months, one year, or even five years, while another proposal includes a retroactive shield that would wipe out legal liability for all of 2020 as well. Meanwhile, Democratic lawmakers have remained opposed to any such measure, setting up tense negotiations.

NOT INCLUDED – FURTHER STIMULUS CHECKS

Despite urging from unlikely allies at the White House and some progressive members in the Democratic ranks, the current congressional proposal does not include a second round of stimulus checks, like the \$1,200 payments provided at the outset of the pandemic.

NOT INCLUDED – HAZARD PAY

A plan for mandating that certain employers provide cash bonuses to essential workers and healthcare employees is also not included in the bipartisan proposal.

NOT INCLUDED – FEDERAL PAID SICK LEAVE OR EMERGENCY FMLA

Finally, the current version of the bipartisan proposal does not extend the paid sick leave and emergency family and medical leave ushered in during the early stages of the pandemic. The Families First Coronavirus Recovery Act (FFCRA) is set to expire on December 31 and may not be extended into 2021. While a number of states have established their own paid sick leave systems, we may not see this continue at the federal level.

Conclusion

We will continue to monitor further developments and provide updates as negotiations continue, so make sure you are subscribed to Fisher Phillips' alert system to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney.

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