

BIDEN'S PROPOSED COVID-19 ECONOMIC RESCUE PLAN WOULD LEAD TO DRAMATIC WORKPLACE CHANGES

Insights
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President-elect Biden has unveiled an ambitious legislative package that would serve to not only provide a third wave of economic stimulus relief to address the impacts of the COVID-19 pandemic but also transform the American workplace. His January 14 announcement of the \$1.9 trillion "American Rescue Plan" was met with initial support from many Democratic lawmakers and worker advocates – and [an announcement of welcome by the U.S. Chamber of Commerce](#) – but skepticism and objections from some Republicans. The bill will be an early test of Biden's promise to seek bipartisan support for his legislative proposals, especially with no room for error in a 50-50 Senate. What would the American Rescue Plan mean for employers and the workplace in general?

Extend And Expand Emergency Paid Leave to Workers

While the federal Families First Coronavirus Response Act (FFCRA) expired on December 31, 2020 (and with it, covered employers' obligation to provide emergency paid sick leave and emergency family and medical leave), that expiration may be short-lived. The Biden plan seeks to extend and expand emergency paid leave obligations in several key areas.

First, his proposal seeks to extend the paid leave requirements until September 30, 2021. Second, the proposal seeks to extend the paid leave obligation to apply to employers with more than 500 employees (who were not covered by the FFCRA) and less than 50 employees (who potentially were exempt a small business exemption under

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the FFCRA). Third, the Biden proposal states that it will provide “over 14 weeks” of paid sick leave and family and medical leave, and a maximum paid leave benefit of \$1,400 per week. From the proposal, it is not clear whether this requirement would simply be an extension of the FFCRA, or whether covered workers would be entitled to a “brand new” 14-week leave entitlement, in addition to paid leave that may have already been provided under the FFCRA.

Fourth, the proposal would extend paid leave requirements to categories of workers excluded or exempted from the FFCRA, including federal workers and certain healthcare workers and first responders. Finally, in a potential ray of sunshine for smaller employers, the Biden plan would extend the federal tax credit to employers for the full cost of paid leave for employers with less than 500 employees.

Regardless of what eventually comes of the Biden proposal, employers will also have to continue to monitor emergency or supplemental paid sick leave requirements under state and local laws. Many (but not all) of these requirements also expired at the end of 2020. There will likely be further action by state and local governments to similarly extend and expand these paid leave obligations.

Increased Federal Minimum Wage

While it is not surprising that President-elect Biden seeks to raise the minimum wage to \$15 per hour, the details of the current proposal include several surprises. Contrary to the path chosen by many states to gradually increase minimum wage over a period of years, the president-elect wants to more than double the minimum wage *immediately*. Another surprise that deserves more attention than it has received is the proposal to eliminate the tip credit.

This would be a one-two punch to small- and medium-sized employers – especially those in the hospitality industry. Much has been written about how an increase in the minimum wage will lead to the loss of jobs through business failures, automation, and movement of jobs overseas. Layering the elimination of the tip credit on top only compounds the negative effects. Many employers may hope that the proposed minimum wage hike to an immediate \$15 per hour level is a starting point and that through negotiations, a more practical solution can be achieved that will not be as devastating to American businesses and jobs.



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Aid For Small Businesses

President-elect Biden's proposal seeks support for the hardest-hit small businesses, especially minority-owned small businesses and those in industries like restaurants, hotels, and the arts, by allocating funding they need to respond to unprecedented economic challenges caused by the COVID-19 pandemic. Specifically, President-elect Biden's plan includes \$15 billion in grants to help more than one million small businesses.

Additionally, Biden's plan proposes to invest \$35 billion in state, local, tribal, and non-profit small business financing programs. In doing so, the plan conceives generating as much as \$175 billion in low-interest loans and venture capital to help small businesses create and maintain jobs, build wealth, and provide essential goods and services. In this regard, his plan echoes the [State Small Business Credit Initiative](#) (SSBCI) created through the Obama-era Small Business Jobs Act of 2010. Biden also calls on Congress to ensure that restaurants, bars, and other hard-hit businesses receive support, including through the Commodity Credit Corporation at the U.S. Department of Agriculture.

The flexible and equitably distributed grants and other financing programs are in addition to the current Paycheck Protection Program which provides small businesses with the potential for 100% forgivable loans. And although the details of Biden's plan for small business relief remain vague, given that small business revenue is down significantly with a staggering number of small businesses permanently closed, news of continued help for small businesses provides encouragement as the new administration responds to the economic needs of Americans devastated by the pandemic.

Resources For Vaccination Program

Although details are emerging, Biden's proposal would allocate additional money and resources to increase the pace of vaccine distribution. This would include making the vaccine available sooner to a broader range of people than through the phased distribution plans that were initially announced, as well as establishing additional vaccination centers, particularly in areas seen as most vulnerable and/or previously underserved. As specifics take shape, these proposals could affect employers whose workers are involved in the administration of the vaccine.



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At a minimum, these activities offer the potential for more workers to have access to vaccinations sooner, thus giving employers the chance to more fully restore their operations sooner. Along with these opportunities, employers will face questions about their policies, including whether to *require* or *encourage* vaccines, as well as issues such as requests for accommodation from employees whose medical circumstances or sincerely held religious beliefs would keep them from being inoculated. These developments also focus more attention on the importance of employee education and possible incentives to encourage more people to get COVID-19 vaccinations.

The [Fisher Phillips Vaccine Resource Center](#) contains information, forms and model policies related to many of these questions, as well as a 50-state chart tracking relevant state laws that could affect employers' decision-making.

Enhanced Workplace Safety Standard

President-elect Biden intends to ask Congress to authorize and fund OSHA to issue and enforce a COVID-19 Protection Standard. The requested standard will, in addition to private employers, cover public front line workers. It will also include an anti-retaliation provision intended to protect workers who complain about their employer's efforts regarding protection from COVID-19. Importantly, employees are currently protected by section 11(c) of the OSH Act from retaliation for reporting safety concerns.

This request for a COVID-19 Standard is understood to be in addition to any emergency temporary standard OSHA may issue since it is the agency that is authorized to issue an emergency temporary standard without Congressional authorization. The temporary standard may stay in effect for six months, during which time OSHA must promulgate a "permanent" standard. Congressional authorization for the COVID-19 Standard could assist in a process toward a permanent standard. Importantly, the call to Congress includes a request for increased funding for enforcement (i.e., more inspectors and inspections).

Unemployment Insurance Boost

[The CARES Act](#) and recent [Stimulus 2.0](#) expanded unemployment assistance for millions of Americans whose employment was impacted by the COVID-19 pandemic. The

American Rescue Plan, if enacted, would expand these benefits even further. Among the potential unemployment provisions within this plan are an extension from mid-March until September 2021 and an increase in the total number of weeks provided under the emergency unemployment insurance program.

Stimulus 3.0 also boosts the unemployment insurance supplement from \$300 per week to \$400 per-week, in addition to existing state unemployment benefits. While this number is still well below the \$600 supplement provided for in the CARES Act last year, it is expected to provide additional help to over 18 million Americans. Stimulus 3.0 also provides funding for state's work sharing programs that may help avoid layoffs and pave the way for accelerated recovery.

Third Round Of Stimulus Payments

Another benefit that would result from the American Rescue Plan – and the one that has captured the most public attention – is a third round of stimulus payments to eligible individuals. Following through on the call from the unlikely alliance of President Trump and many Congressional Democrats, the American Rescue Plan would tack on an additional \$1,400 in stimulus payments to the \$600 that were provided in last month's Stimulus 2.0 legislation.

Expanded Child Tax Credits

If passed, the American Rescue Plan would expand the child tax credit by increasing the credit for children under age 6 to \$3,600 (from the current \$2,000). It would also create a new category of eligible recipients by increasing the eligibility age to 17 and setting a tax credit for those aged 6 to 17 to \$3,000. Further, the Biden plan would make the credit fully refundable, meaning that parents would still receive the benefit of the credit even when it exceeds their taxes. It is worth noting that the proposal, as originally crafted, would provide these expanded credits available on an emergency basis for one year only.

Conclusion

The text of the American Rescue Plan has not yet been released, but we can expect the Biden administration to move quickly and work with Congress soon after his inauguration to begin work on it. It remains to be seen

whether Biden and lawmakers in support of the package would be willing to compromise and tackle each section of the proposal in piecemeal fashion – stimulus payments negotiated separately from the minimum wage hike, for example.

We will keep a close eye on negotiations and provide updates as warranted. You should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions about any aspect of this legislative proposal and its impact on your workplace, contact your Fisher Phillips attorney.

This Legal Alert provides an overview of a specific federal bill. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.