House Passes American Rescue Plan; Next Stop, The Senate

Insights
3.01.21

In the early morning hours of Saturday, February 27, the U.S. House of Representatives passed President Biden's $1.9 trillion latest COVID-19 stimulus bill, containing a slew of employment-related initiatives that could have long-term impacts on American workplaces. Next up for the legislation known as the American Rescue Plan: the U.S. Senate, which is aiming to pass some version of the measure before March 14 – the date that a portion of the unemployment benefits from the last pandemic relief bill expire. What do employers need to know about this legislative proposal, which is inching ever-closer to passage?

Will The $15 Minimum Wage Hike Survive?

The portion of the American Rescue Plan that has received the most attention is the minimum wage hike. President Biden has repeatedly declared his intention to raise the minimum wage to $15 (and to end the "tipped minimum wage"). His plan was to include this as part of the American Rescue Plan. But on Thursday of last week, the Senate Parliamentarian ruled that the minimum wage increase, as currently proposed, could not remain in the bill without being subject to the Senate's filibuster rule – which would require 60 votes for passage.

Since this ruling, Democrats have issued mixed messages about how they intend to proceed. The White House said it would respect the Parliamentarian's decision, and the House passed its version of the bill that included the $15 minimum wage increase. Other Democratic Senators have said they will continue to fight – yet two Democrats in the Senate have indicated that a move to $15 is too much – raising doubts about whether the bill could pass even if the Senate filibuster were eliminated. All of this has prompted discussions of a lower proposed minimum wage increase, but progressive Democrats indicate that they are unwilling to compromise on the amount.

To try to satisfy the Senate rules, some have proposed a tax on large companies that don't pay their employees at least $15 per hour. While it is unclear whether this would be approved by the Parliamentarian, the proposal is being criticized from all sides raising doubts about its prospects – and reports over the weekend indicate that initial supporters of the proposal have all but abandoned their plan to push for this mechanism.

Again, the president wants this bill passed before federal unemployment supplements expire in mid-March. This leaves little time to negotiate a compromise and President Biden does not want to risk the stimulus bill being derailed. So, absent a change in the filibuster rules in the Senate and a change in heart by at least two hesitant Democratic Senators, it is unlikely the minimum wage increase will remain in the stimulus bill when it gets considered by the Senate in the coming weeks. Whether in this bill or not, however, progressive Democrats insist they will pass legislation soon raising the minimum wage to $15 – so this is unlikely the last time you'll hear about this issue.

Vaccine Distribution Boost

The American Rescue Plan provides $20 billion to create a national COVID-19 vaccination program that would establish community vaccination sites across the country and aim to break vaccine distribution logjams. There is also an additional $5 billion available for advanced vaccine development, if needed.

Despite the potential of vaccines becoming widely available in the short term, many employers remain unprepared to deal with vaccinating their workforces. What should employers do now to prepare for the imminent widespread distribution of vaccines? Fisher Phillips has developed a 10-point action plan to assist employers, available on the FP Vaccine Resource Center.

Extension Of FFCRA Tax Credits

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. Shortly before the end of the year, Congress extended the tax credit for employers who ***voluntarily*** continued to provide such paid leave through March 31, 2021.

As we previously discussed, President Biden's original vision for the American Recue Plan proposed to extend and expand emergency paid leave obligations in several key areas. However, the House version of the current COVID-19 relief bill does not extend the employer obligation to provide paid leave. Instead, the legislation merely extends the tax credit for voluntary provision of leave through September 30, 2021, and makes related changes. These provisions of the relief bill include the following:

- Extends the tax credits available for employers who voluntarily provide FFCRA leave from March 31, 2021 to September 30, 2021.
- Provides that the tax credits are available for paid sick leave and paid family leave provided for the additional following qualifying reasons:
- The employee is obtaining immunization (vaccination) related to COVID-19; or
- The employee is recovering from any injury, disability, illness or condition related to such vaccination.
- Adds non-discrimination rules to provide that no tax credit is available if the employer, in determining availability of the paid leave, discriminates against highly compensated employees, full-time employees, or employees on the basis of tenure with the employer. This provision

appears designed to compel employers who make the decision to voluntarily provide leave do so in a uniform manner, without discriminating against certain categories of workers.

Even though the current legislation does not extend the employer mandate to provide paid FFCRA leave, this is likely not the last conversation on this topic. There are indications that the Biden administration may attempt to resurrect pieces of the American Rescue Plan that did not make it into this bill into subsequent legislation in the near future.

There are also various pending proposals at the federal level to adopt a more comprehensive paid leave obligation for employers (such as the FAMILY Act, discussed in more depth here). Therefore, employers will need to stay tuned. In addition, employers need to be aware of state and local COVID-19 paid leave obligations, many of which continue to apply or have been extended beyond the expiration of the FFCRA.

Small Business Relief

The American Rescue Plan Act provides additional support for small businesses, especially those in hard-hit industries like restaurants and bars, by allocating funding they need to respond to unprecedented economic challenges caused by the COVID-19 pandemic.

Specifically, the bill includes $25 billion in grants for a new Small Business Administration program focused on supporting restaurants and other food and drinking establishments, with approximately $5 billion set aside solely for businesses with under $500,000 in revenue in 2019. These grants are available for up to $10 million per entity, with a limitation of $5 million per physical location. Entities are limited to 20 locations. This funding echoes President Biden's call on Congress to ensure that restaurants, bars, and other hard-hit businesses receive the necessary support.

The bill provides an additional $7.25 billion for the Paycheck Protection Program, which provides small businesses with the potential for 100% forgivable loans. The additional PPP funding brings the total for the current round of the program to over $813 billion. Moreover, the bill expands PPP eligibility for certain nonprofit organizations and "internet-only news and periodical publishers" with 500 employees or less per physical location.

The bill includes $15 billion for the Targeted Economic Injury Disaster Loan (EIDL) Advance program designed to provide economic relief to businesses that are currently experiencing a temporary loss of revenue due to COVID-19. Like the PPP, the EIDL program is administered through the SBA to help qualifying businesses meet financial obligations and operating expenses that could have been met had the disaster not occurred. The bill directs the SBA to make any remaining funding available for supplemental grants to "severely impacted" small businesses that meet the specified qualifications of: 1) having suffered a loss of at least 50%; 2) are located in a low-income census tract as defined by section 45D(e) of the Internal Revenue Code; and 3) have 10 employees or fewer.

The bill also includes an additional $1.25 billion for the Shuttered Venue Operators Grant (SVOG) program, which had previously appropriated $15 billion in the December 2020 stimulus package. Eligible entities for the SVOG include live venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theatre operators, and talent representatives.

Unemployment Benefits

As noted above, President Biden considers it imperative that workers impacted by the pandemic not lose out on emergency enhanced unemployment benefits. But the expanded unemployment assistance under the CARES Act and Stimulus 2.0 that have assisted Americans whose employment was impacted by the COVID-19 pandemic are set to expire soon in mid-March. Without an extension, concerns for millions of unemployed Americans are rising. However, the House's legislation seeks to increase and further extend these unemployment benefits.

Specifically, the House's legislation would generally boost weekly unemployment benefits from $300 per week to $400 per week, increase the total number of entitlement weeks from 50 weeks to 74 weeks, and extend the unemployment benefits from mid-March through August 29. While Biden's proposed outline for the American Rescue Plan sought to extend these benefits even one month longer, the House's bill would still go a long way to address the looming concerns for the millions of Americans currently on unemployment insurance.

Third Round Of Stimulus Payments

The legislation passed by the House provides funding for a third stimulus payment of up to $1,400 per individual and dependent, aiming to fulfill the promise of $2,000 payments that gained popularity on the campaign trail in late 2020. For this round of payments, individuals earning up to $75,000 and married couples earning up to $150,000 will receive the $1,400 payments, plus $1,400 per dependent (including certain adult dependents such as college students, disabled adults, and the elderly).

Tax Credits And COBRA Benefits

The version of the American Rescue Plan that just passed the House expands two important tax credits: the child tax credit and the earned income credit.

The bill increases the child tax credit from $2,000 per child under age 17 to $3,000 for those age six through 17 and to $3,600 for those under age six. Currently the credit phases out at $200,000 for single tax return filers and $400,000 for joint filers. The new bill lowers those thresholds to $75,000 and $150,000 respectively. Another key provision makes the credit fully refundable, meaning that those who pay little or no taxes will still be able to take full advantage of the credit. Recipients can receive monthly installments (which would facilitate paying monthly living expenses) or a lump sum.

The earned income credit for lower income taxpayers who do not have children has also been expanded. The amount has nearly tripled and the minimum age to claim to the credit is reduced from 25 to 19. No upper age limit is imposed under the new bill.

The bill also provides for an 85% COBRA premium subsidy through September 2021 for those who are involuntarily terminated and want to remain on their employer's health insurance. This allows those impacted to compare the 15% COBRA premium with the amount they would pay in the marketplace for coverage and make a more informed decision.

A "Rescue Plan" For Multiemployer Union Pensions

The perpetual debate over how to rescue sick multiemployer pension plans appears poised to end with a whimper. Tacked on at the very end of the American Rescue Plan, the Butch Lewis Emergency Pension Relief Act of 2021 would essentially kick the can down the road for another 30 years.

Many unionized employers had hoped for a comprehensive measure addressing the systemic problems that have plagued multiemployer pension plans for years. Fading industries, "last man standing" concerns, unfair withdrawal liability rules, orphan participants, undue vulnerability to economic downturns, and other hobgoblins were crying out for a thoughtful legislative solution. Instead, Congress ignored the systemic issues in favor of a proposed mass bail-out directing billions of dollars to the sickest multiemployer plans. There are no reforms or substantive fixes for the system that brought many of these plans and their contributing employers, plus the Pension Benefit Guaranty Corporation, to the brink of disaster.

So what's in store for multiemployer plans and the employers who contribute to them? First, the current withdrawal liability rules would stay in place, unchanged. There would be no surcharges on employer contributions, no employer paid PBGC premiums, and no additional withdrawal penalties. The sickest of the multiemployer plans – those in "critical and declining" status – would be given enough money in a lump sum by the U.S. Treasury to pay benefits through 2051. Termed "financial assistance," these amounts will not be repaid. There would be restrictions on how this money may be invested, future benefit increases would be prohibited, and PBGC would keep an eye on other plan activities such as employer contribution rates, withdrawal liability, and grants of unfunded benefit service. For the next 15 years, withdrawing employers would have their withdrawal liability calculated as if the plans had not received their bailouts.

Retirees who were forced to take benefit cutbacks under prior law would have their benefits restored and will be paid back. There would be no future cutbacks. Rehabilitation plans would remain in place, but employers may see some relief as future contribution rate increases may not be as severe as now required. Finally, PBGC premiums (paid by multiemployer plans) would increase to an indexed $52 per participant per year in 2031. Current flat rate premiums are $31 per participant per year.

Who loses here if the American Rescue Plan passes as is? Aside from taxpayers in general and the healthy multiemployer plans that will incur PBGC premium increases, the big pie in the face goes to 401(k) participants who try to maximize their savings. Contribution limits for 401(k) plans, which are currently indexed for cost of living, would be frozen beginning in 2031.

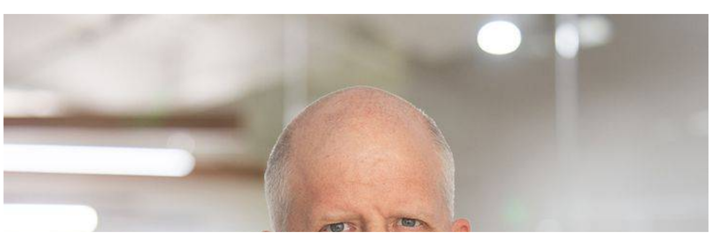
Conclusion

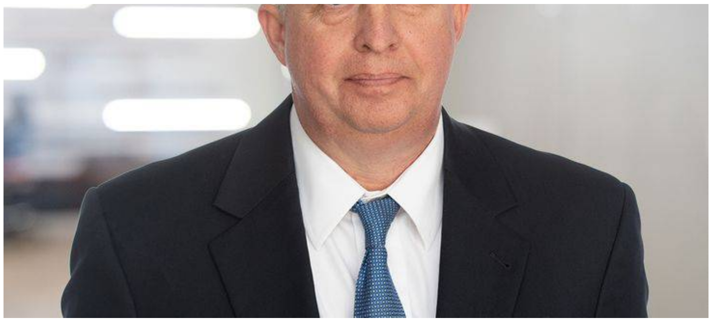
The bill now moves to the Senate, which will have to do quick work to debate and decide on the American Rescue Plan before the self-imposed March 14 deadline. We will keep a close eye on negotiations and provide updates as warranted. You should ensure you are subscribed to Fisher Phillips' alert system 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.

Related People

Benjamin M. Ebbink
Partner
916.210.0400
Email





Ron M. Pierce
Of Counsel
303.218.3626
Email

J. Hagood Tighe
Partner and Co-Chair, Wage and Hour Practice Group
803.740.7655
Email

Richard R. Meneghello
Chief Content Officer
503.205.8044
Email

Robert C. Christenson
Partner
404.240.4256
Email

Service Focus

Counseling and Advice

Employee Leaves and Accommodations

Employee Benefits and Tax

Workplace Safety and Catastrophe Management

Labor Relations