ELM

EMPLOYEE LIABILITY MANAGEMENT, INC.

American Rescue Plan Act - Extension of EPSL and EFMLA and New COBRA Subsidies

On March 11, 2021, President Joe Biden signed the American Rescue Plan Act of 2021 (HR 1319) (ARPA) to address the ongoing economic impacts of COVID-19. The portions of the act that directly affect HR functions are discussed below.

Optional Extension of Sick and Family Leaves

Part of the ARPA is an extension of the current tax credit scheme for Emergency Paid Sick Leave (EPSL) and Emergency Family and Medical Leave (EFMLA) under the Families First Coronavirus Response Act (FFCRA). The FFCRA required many employers to provide EPSL and EFMLA in 2020, but became optional when it was previously extended to cover January 1 through March 31, 2021.

The new extension under the ARPA takes effect April 1, 2021 through September 30, 2021 and, similar to the current version, remains optional. In addition, tax credits are available but only to employers with fewer than 500 employees and up to certain caps. To receive the tax credit, employers are required to follow the FFCRA's original provisions. For example, they cannot deny EPSL or EFMLA to an employee if they're otherwise eligible, cannot terminate them for taking EPSL or EFMLA, and must continue their health insurance during these leaves.

Emergency Paid Sick Leave (EPSL) Changes

Key changes to EPSL, effective from April 1 through September 30, 2021, are:

- Employees may take EPSL to get the COVID vaccine and recover from any related side effects.
- Employees may take EPSL when seeking or waiting for a COVID-19 diagnosis or test result if they've been exposed to the virus or if their employer required a diagnosis or test.
- Employees will be eligible for a new bank of leave on April 1. Full-time employees are entitled to 80 hours and part-time employees are entitled to a prorated amount. Unused hours from before April 1 will not carryover.

- Employers cannot provide EPSL in a manner that favors highly compensated employees or full-time employees or that discriminates based on how long employees have worked for the employer (tenure). This is discriminatory and will disqualify the employer from receiving the tax credit. Failing to comply with the FFCRA (including its antiretaliation provisions) also disqualifies employers from receiving the tax credit.

Emergency Family and Medical Leave (EFMLA) Changes

Key changes to EFMLA, in effect from April 1 through September 30, 2021, are:

- EFMLA may be used for any EPSL reason, in addition to the original childcare reasons. This includes the two new EPSL reasons noted above (vaccination and diagnosis/test results).
- The 10-day unpaid waiting period was eliminated.
- The cap on the reimbursable tax credit for EFMLA was increased to $12,000 (from $10,000). This applies to all EFMLA taken by an employee beginning April 1, 2020. This change accounts for the additional 10 days of paid time off; however, the daily cap of $200 remains the same.
- Employers cannot provide EFMLA in a manner that favors highly compensated employees or full-time employees or that is based on how long employees have worked for the employer.

Reasons for Using EPSL and EFMLA

Starting on April 1, employees may take EPSL or EFMLA under the same conditions, which are:

1. When quarantined or isolated subject to federal, state, or local quarantine or isolation order.
2. When advised by a health care provider to self-quarantine because of COVID-19.
3. When the employee is:
    a. Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
    b. Seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 because they have been exposed or their employer requested the test or diagnosis; or
    c. Obtaining a COVID-19 vaccination or recovering from any injury, disability, illness, or condition related to the vaccination.
4. When caring for another person who is isolating or quarantining due to government or doctor’s orders.
5. When caring for a child whose school or place of care is closed due to COVID-19.

Tax Credit Review

The tax credits available between April 1 and September 30 are the same as under the original FFCRA, except for the increased aggregate cap for EFMLA. Regardless of how much EPSL or EFMLA an employee used prior to April 1, the available tax credits are as follows:

- The credit available for EPSL when used for reasons 1, 2, or 3 (self-care) is up to 100 percent of their regular pay, with a limit of $511 per day.
- The credit available for EPSL when used for reasons 4 or 5 (care for another) is up to 2/3 of their regular rate of pay, with a limit of $200 per day.
- The credit available for EFMLA for any reason is up to 2/3 of their regular pay, with a limit of $200 per day and a cap of $12,000 per employee.

Employers may also claim a credit for their share of Medicare tax on the employee’s wages and the cost of maintaining the employee’s health insurance (qualified health plan expenses) during their absence.