

COVID STIMULUS:

AMERICAN RESCUE PLAN

On Thursday, March 11, a new COVID-19 stimulus package was signed into law: the \$1.9 trillion American Rescue Plan (ARP). It includes updates to many of the COVID-relief programs with which business owners have become familiar: the Paycheck Protection Program (PPP), Employee Retention Credits (ERC), Paid Leave Credits, and the Economic Injury Disaster Loan Program (EIDL). One new grant program, the Restaurant Revitalization Fund (RRF), was also created.

In addition, the ARP allocates funds for Economic Income Payments, Expanded Child Tax Credit and Earned Income Credit, Premium Tax Credits, Subsidy for COBRA Payments, Expanded Unemployment Insurance and other programs. Some of these may impact employer responsibilities.

Please read on for details of programs that will affect business owners.

Paycheck Protection Program

The ARP adds an additional \$7.25 billion for the PPP. It expands eligibility to include more nonprofit businesses, including 501(c)(5) labor organizations, 501(c)(7) social and recreation clubs, and 501(c)(8) fraternal benefit societies, that do not employ more than 300 employees per location or spend more than \$1 million annually or more than 15% of their time on lobbying activities. The ARP also allows 501(c)(3) groups with as many as 500 employees per location to participate in the PPP.

In addition to nonprofits, online news publishers may now participate in the PPP as long as they have 500 or fewer employees and certify that the funds will be used to support local news.

The ARP also changes the PPP loan forgiveness rules so that COBRA health insurance premiums may be included for individuals who qualify. This change is not retroactive so it applies only to PPP loan forgiveness applications submitted after the law's enactment.

Employee Retention Credits

The ARP extends ERC through December 31, 2021. It also expands eligibility so that startups established after February 15, 2020, with average annual gross receipts not exceeding \$1,000,000, may participate, but the ERC for startups is capped at \$50,000 per calendar quarter.

FFCRA Paid Leave Credits

The ARP extends the tax credits established by the Families First Coronavirus Response Act (FFCRA) if employers choose to continue to voluntarily offer paid leave in qualifying circumstances through September 30, 2021.

The ARP makes some additional changes:

Emergency Paid Sick Leave (EPSL):

- ✿ It adds **new reasons to qualify for leave**, including vaccine appointments, complications from receiving the vaccine, and wait times for test results or diagnoses.
- ✿ It **resets the previous caps on hours/time off** after March 31, 2021, so employees who have used their full 80 hours of paid sick leave or 10 weeks of paid family leave have a new bank to pull from starting in April.

Emergency Family Leave Expansion Act (EFMLA):

- ✿ The ARP also changes the entitlement to EFMLA pay. Now, **all 12 weeks of EFMLA can be paid** where previously the first 2 weeks were not paid.
- ✿ The benefits have now been expanded to include all of the reasons an employee can take emergency paid sick leave and are **no longer limited to only school or childcare issues**.

For both programs:

- ✿ It adds **non-discrimination rules** that make FFCRA credits only available to employers who provide them to all employees. In other words, it must be offered to newly hired employees and part-time employees and not just highly-compensated employees, full-time employees or employees who have a certain tenure.
- ✿ If an employee is provided EPSL, that is a separate benefit and does not reduce the amount of leave provided under the EFMLA. So, an **employee could take up to 14 weeks** of paid leave **and the employer could qualify for the full tax credit** for this period if they elect to extend the EPSL and EFMLA benefits after April 1, 2021.
- ✿ It increases the **cap on paid family leave** from \$10,000 to \$12,000.

Enhanced SBA Grant Programs

The ARP provides additional funds for the new Restaurant Revitalization Fund (RRF) and the Economic Injury Disaster Loan (EIDL) Program, both of which are administered by the Small Business Administration (SBA). The law states that RRF grants and EIDL advances should be excluded from gross income for tax purposes.

Restaurant Revitalization Fund

The ARP also provides \$28.6 billion for the RRF, which is open to restaurants, bars, food trucks, and caterers, including businesses in airport terminals and tribally owned entities. It excludes businesses that are run by state or local governments, entities managing more than 20 locations including affiliates, live venues seeking grants under the stimulus package passed in December, and publicly traded companies.

- ✿ Access:
 - For 60 days following the law's enactment, the SBA will allot \$5 billion to eligible entities with gross revenue of \$500,000 or less in 2019.
 - The SBA has been directed to have an initial 21-day period to prioritize grants for small businesses that are owned by women, veterans, and socially or economically disadvantaged individuals.
 - Other grants will be given on a first-come, first-served basis.
- ✿ Grant Amounts:
 - The grants will cover the difference between 2019 and 2020 revenue. For restaurants that opened in 2019, the average 2019 monthly revenue should be multiplied by 12, and then the average 2020 monthly revenue multiplied by 12

- should be subtracted. If applicable, the grant would be reduced by the amount of the PPP loan the business received.
- o Aggregated grants provided to affiliated businesses cannot exceed \$10 million and are limited to \$5 million per location.
- ◆ Eligible Expenses: Grant funds should be used for payroll costs, mortgage and rent payments, supplies, food and beverage costs that are within the scope of the normal business practice, operational expenses, and paid sick leave.

Economic Injury Disaster Loan Program

The ARP provides an additional \$15 billion for EIDL advances and directs the SBA to allocate \$10 billion to covered entities that didn't receive their full advance payments under the stimulus package passed in December. The rest should be set aside for new payments of \$5,000 to covered entities with 10 or fewer employees that had economic losses of more than 50% during the covered period.

COBRA Premium Subsidy

A subsidy for the payment of COBRA premiums was added for the period beginning on April 1, 2021, through September 30, 2021, which permits eligible individuals to elect COBRA at no cost for the six-month period of premium assistance. The subsidy would apply to individuals who were already on COBRA due to involuntary termination (excluding gross misconduct) or reduction of hours at the beginning of the subsidy period.

There is also a special second election period for COBRA for those who experienced an involuntary termination or reduction of hours prior to April 1 but did not elect COBRA during their initial 60-day window **or** those who had elected COBRA and subsequently lost coverage prior to April 1 (that is, due to non-payment of premiums). If electing under the special election period, their COBRA would start April 1, but the maximum COBRA timeframe is still based on their original qualifying event (date of termination or reduction in hours). This special election period has been set up to allow for COBRA election with a gap in coverage from the prior coverage, which is new and different from how COBRA enrollments are normally handled.

COBRA generally applies to all private-sector group health plans maintained by employers that had at least 20 employees on more than 50 percent of its typical business days in the previous calendar year. Both full- and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of a full-time employee, with the fraction equal to the number of hours worked divided by the hours an employee must work to be considered full-time based on a 40-hour work week.

Employer Required Notices

- ◆ Notice of Premium Subsidy Availability: Employers will be required to provide notice to eligible individuals of the premium subsidy. However, the standard COBRA notices can be modified to include a reference regarding the premium subsidy.
- ◆ Notice of Termination of Premium Subsidy: Employers will be required to provide a notice about termination of the premium assistance prior to the end of the subsidy period. The notice must specify that the premium assistance will expire soon, identify the date of the expiration, and explain the individual may be eligible for coverage without premium assistance through COBRA continuation coverage. The notice must be provided at a minimum between 45 days prior to the end and 15 days following the end of the subsidy period. Based on the end date specified in the ARP, the notice would need to be provided between August 16 and October 15, 2021.

For More Information

For more information or assistance from our team, please contact us at **210-495-8474**, toll-free at **1-888-757-2104**, or **Info@BFGonline.com**.



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