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EMPLOYMENT LAWSCENE ALERT: AMERICAN RESCUE PLAN EXTENDS TAX CREDITS FOR COVID-RELATED LEAVE

On March 11, 2021, President Biden signed the American Rescue Plan into law. Among a wide variety of other aims, the $1.9 trillion bill extended tax incentives for certain employers that chose to provide their employees with qualifying paid leave related to the COVID-19 pandemic.

In March 2020, the Families First Coronavirus Response Act ("FFCRA") was signed into law. The FFCRA contained two leave components: the Emergency Paid Sick Leave Act ("EPSLA") and the Emergency and Family and Medical Leave Act ("EFMLA"). Under the EPSLA, employers with fewer than 500 employees were required to provide employees with up two weeks of leave sick leave for six COVID-related reasons; and under the EFMLA, employers with fewer than 500 employees were required to provide employees with up to 12 weeks of leave if their children's school or child care facilities were closed due to COVID. Those employers could then offset the expense of such paid leave through tax credits. Mandated leave under the FFCRA ended on December 31, 2020, but in December 2020, the tax credits were extended through March 31, 2021 for employers with fewer than 500 employees that opted to continue to provide qualifying EPSLA and EFMLA leave.

The American Rescue Plan similarly gives employers with fewer than 500 employees the option, but not the obligation, to continue to provide EFMLA and EPSLA to employees through September 30, 2021 and provide employers with a 100% tax credit to offset the cost of such leave. The American Rescue Plan has also expanded the list of qualifying reasons for EPSLA leave to include time off to receive the COVID-19 vaccination and time off to recover from side effects of receiving the vaccination. Employers should be mindful to update their existing FFCRA leave forms to reflect these additional uses for leave. Finally, on April 1, 2021, for employers who opt to provide continued leave pursuant to EPSLA and EFMLA, employees are entitled to a renewed two-week bank of EPSLA leave, and if an employee's bank of FMLA has not otherwise renewed pursuant to the employer's FMLA policy, the 12-week EFMLA leave bank would also be replenished.

Therefore, while the American Rescue Plan does not add any new obligations for employers, it does continue to provide incentives in the event that employers with fewer than 500

employees choose to provide COVID-related paid time off. As always, O’Neil Cannon is here for you. We encourage you to reach out to our labor and employment law team with any questions, concerns, or legal issues you may have, including those regarding COVID and related issues.