



Next Level Strategies

We Focus on HR so You Can Focus on Your Business

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Hello clients, friends and colleagues. My intention was to get a second, "New for 2021" update newsletter out to all of you but time has been limited and the American Rescue Act (ARPA) and California's Supplemental Covid Paid Sick Leave (CASCVPSL) passed while we waited. The ARPA came online TODAY, 4/1/21, and CASCVPSL was effective on 3/29/21 but is retroactive to 1/1/21, so it seemed a better use of my time and yours to tell you what you need to know today. Lots of information and text dense - my apologies but there really isn't a great way to shorten it. Ready for this? Buckle up!

Updates, News and Information

ARPA vs CASCVPSL - SICK LEAVE

Say that three times really fast! The best way to explain this is to run the two new sick laws side by side. The background is that the Families First Coronavirus Response Act (FFCRA) passed last year and went into effect on 4/1/20. It ended on 12/31/20. FFCRA was mandatory but, between 1/1/21 and 3/31/21, employers could still opt to offer it and get tax credits, IF the employees had time left in their FFCRA banks. No new time was offered. The ARPA is also optional (but we strongly encourage you to offer these benefits!!) AND the banks are reset plus increased. However, under CASCVPSL, the sick time portion is mandatory. In short, in the last year, more than four Covid-related sick leave laws have floated around so it's all quite confusing. I'll lead with the good news:

These amounts are paid by the employer to the employee and immediately reimbursed through federal taxes!

- ARPA: Employers with less than 500 employees
- CASCVPSL: Employers with between 25 – 500 employees

- ARPA: Optional
- CASCVPSL: Mandatory

- BOTH: All employees seem to be eligible regardless of length of service.

- ARPA: Effective 4/1/21, expires 9/30/21.
- CASCVPSL: Retroactively effective on 1/1/21 through 9/30/21

- BOTH: Adds two weeks/80 hours (or equivalent for PT employees) of paid sick leave, not accrued but given as a lump sum.

The reasons for time off have been expanded under ARPA. **Reasons 6-8 are new.** All of the following reasons must relate directly to Covid-19.

1. Subject to a federal, state, or local quarantine or isolation order;
 2. Have been advised by a healthcare provider to self-quarantine;
 3. Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 4. Caring for an individual who is subject to a quarantine or isolation order or has been advised by a healthcare provider to self-quarantine;
 5. Caring for their child if the school or place of care of the child has been closed, or the childcare provider of the child is unavailable;
 6. *Obtaining a COVID-19 immunization*
 7. *Recovering from an injury, disability, illness or condition related to immunization (i.e. side effects of the vaccine).*
 8. *Seeking or awaiting the results of a COVID-19 test or diagnosis when the employee has either been exposed to COVID-19 or the employer has requested the test or diagnosis.*
- **Payment Limits: ARPA** –EPSL wages are limited to \$511 per day up to \$5,110 total per employee for reasons 1-3, 6-8, and \$200 per day and \$2000 in aggregate for reasons 4 and 5.
 - **Payment Limits: CACVSPSL** –\$511 per day for all reasons, up to \$5,110 in aggregate.
 - **CACVSPSL** the available COVID-19 supplemental paid sick leave must be reflected on employee’s wage statements on a separate line distinct from regularly available sick pay.
 - **Existing Leave Policies:** Paid sick leave under the new law is available to employees in addition to leave under an existing company policy. Employers may not require employees to first use accrued leave under existing company policy before using sick leave under the new law. Employers may not change paid sick leave policies currently in place.
 - **Carryover:** EPSL under the new law does not need to be paid out upon termination.
 - **Employer Notice:** Employers must post in a conspicuous place, a notice, to be prepared by the Labor Commissioner. Model notices have been promised within 7 days of enactment.
 - **Documentation:** You can request only minimal documentation. The DOL’s FAQ’s has them listed out.

ARPA - Expanded Family and Medical Leave Act

- **Covered Employers:** Employers with 500 or fewer employees. Prior to 2020, workplaces with 50+ employees were covered by traditional FMLA which is unpaid. Now, many small employers are

covered by Expanded FMLA which is paid by the employer and reimbursed by the Federal government.



- **Paid Leave:** The employer will provide PAID leave at not less than 2/3 of the employee's regular rate of pay. Paid leave is capped at \$200 a day or \$12,000 in aggregate, per employee.
- 14 total weeks potentially – two weeks of sick and 12 weeks of EFMLA.
- **These amounts are paid by the employer to the employee and immediately reimbursed through federal taxes.**
- **Reasons for Leave:** Any of the eight reasons which exceed the 80 hours of EPSL. Under FFCRA, EFMLA could only be used for childcare.
- **Eligibility:** Usual FMLA employee eligibility requirements do NOT apply.
- **Integration with Traditional FMLA:** Employees get 12 weeks of FMLA and EFMLA in combination so, if an employee uses six weeks of time to have a baby (unpaid), they are left with six weeks of time to be used because daycare isn't available (paid).
- **Leave Entitlement:** Up to 12 weeks, prorated for PT employees based on average hours. Time can be taken intermittently except in cases of personal illness in which case it should be taken in full days.
- **Notification:** An employee must provide notice of the leave as soon as practicable.
- **Job Reinstatement:** Employers must reinstate employees to their same or similar position at the end of EFMLA.

ARPA - COBRA Premium Subsidy

This one is a mind-blower. I've never seen anything like it in my career.

- Requires insurers and employers to provide “assistance eligible individuals” (AEI) with a **100% subsidy for COBRA premiums** from 4/1/21 to 9/30/21. Group health plans maintained by employers with at least 20 FT or PT employees on more than 50% of its typical business days in the previous calendar year.
- **CalCOBRA:** ARPA provides that the subsidy also applies to “a State program that provides comparable continuation coverage.”

- The COBRA subsidy is being funded entirely by the federal government via fully advanceable and refundable Medicare tax credits.
- The employer will recover the entire COBRA premium subsidy, including the 2% administrative fee, for each AEI by offsetting the employer's regular quarterly Medicare employment tax obligation.

Who are Assistance Eligible Individuals (AEI)? A qualified beneficiary:

- Whose COBRA qualifying event is an involuntary termination of employment or (voluntary or involuntary) reduction of hours,
 - Who is not otherwise eligible for Medicare or other group health plan coverage, and
 - Who actually elects COBRA coverage.
- An AEI also includes eligible dependents (spouse and/or child(ren)).
 - **Coverage Period:** Once the AEI's maximum COBRA coverage period ends, the COBRA subsidy also ends. The new law does not extend an AEI's maximum COBRA coverage period.
 - An AEI can become eligible for COBRA coverage on or after 4/1/21. However, it also includes someone who had a COBRA qualifying event BEFORE 4/1/21, and whose maximum COBRA coverage period overlaps with the Subsidy Period. Incredible!
 - If an AEI was entitled to COBRA coverage previously, but never elected COBRA coverage or discontinued COBRA coverage, then a new prospective election opportunity must be provided to AEI's who have time remaining in their maximum COBRA coverage period that would have overlapped with the Subsidy Period when they were first eligible.
 - This special election opportunity begins on 4/1/21 and ends 60 days after the newly required notice of extended election period is provided.
 - If the AEI newly elects COBRA coverage, they are entitled to the COBRA subsidy beginning 4/1/21, **without having to elect and pay for COBRA coverage retroactively for any months prior to the Subsidy Period.** Unheard of!
 - Under ARPA, an employer may (but is not required to) allow AEI's to make a limited change to the coverage they were enrolled in at the time of their qualifying event if the premium for the other coverage is the same price or cheaper than the coverage in effect at the time of the qualifying event.

Required Notifications

- **Election Notice Supplement.** Provide COBRA subsidy information to qualified beneficiaries who first become entitled to elect COBRA during the Subsidy Period. Existing COBRA election notices can be amended, or you may provide a separate document. The DOL will issue a new model notice by 5/1/21.
- **Extended Election Period Notice.** AEIs who first became entitled to elect COBRA prior to the Subsidy Period and whose maximum COBRA coverage period

overlaps with the Subsidy Period must receive a new notice about their extended election period rights by 5/31/21. The DOL will issue a model notice by 5/1/21.

- **Subsidy Expiration Notice.** Plans must notify AEIs of their COBRA subsidy's expiration between 45 and 15 days before the expiration date, unless the COBRA subsidy is ending because the AEI has become eligible for coverage under another group health plan or Medicare. The DOL will issue a model notice by 5/15/21.
- Each notice must include the forms necessary for establishing eligibility for the subsidy, description of the extended election period, etc. Like any other COBRA notice, the applicable per-day penalty for failing to provide compliant notices applies which seems patently unfair since the model notices aren't expected for some time but that's the message.

Pay Data Reporting for Employers with 100+ Employees

SB 973, a California law passed in September 2020, created a new obligation for California employers to annually submit pay data report to the Department of Fair Employment and Housing (DFEH) in part to support California's Equal Pay Act.

Who: Private employers with 100 or more employees. Employers with some employees working in California must count all employees, including those outside of California, including part-time employees and employees on leave.

When: Payroll data be reported by on or before **March 31, 2021.**

What information must be reported?

1. The number of employees by race, ethnicity, and sex in each of the following ten different job categories.
2. The number of employees by race, ethnicity, and sex, whose annual earnings fall within each of the pay bands used by the United States Bureau of Labor Statistics in the Occupational Employment Statistics survey.
3. The total number of hours worked by each employee counted in each pay band during the Reporting Year.
4. The Reporting Year, the dates of the Snapshot Period selected by the employer, the report type (establishment report or consolidated report), and the total number of reports being submitted by the employer.
5. A variety of basic employer information and contact information.
6. Any clarifying remarks.
7. A certification that the information contained in the pay data report is accurate.

How can employers report the data: On online portal found here: [FAQ website](#) .

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