



100 Days In: Update on Biden Employment Policies

Presented by:
Giselle Carson, Esq.
David Ledermann, Esq.
Scott Atwood, Esq.
Katherine Cook, Esq.
2021 May 6



#swflhrlaw



- Business Immigration
- COBRA subsidy
- Agency update
- Families First Coronavirus Response Act

#swflhrlaw

Immigration Update

- H1B caps
- Travel bans
- Consulate processing
- I-9 flexibility



#swflhrlaw

Who is an AEI under ARPA?

- Assistance Eligible Individual (AEI)
- An employee or dependent losing group health plan coverage
- Coverage lost by employee's reduction in hours or involuntary termination
- Ineligible for other group health plan coverage or Medicare
- Elects COBRA within 60 days after notice from plan administrator
- Covered by COBRA or mini-COBRA during subsidy period
- American Rescue Plan Act (ARPA) subsidy period: 4/1/2021 – 9/30/2021

#swflhrlaw

Operation of ARPA Subsidy

- Federal subsidy for 100% of premium plus up to 2% COBRA fee
- Paid by employer under COBRA and by carrier under mini-COBRA
- Employer recoups payment through payroll tax credit



#swflhrlaw

Employer Notice Requirements

- AEI experiencing qualifying event during ARPA subsidy period
 - Notify AEI within usual COBRA notice period (44 days max.)
- AEI based on qualifying event prior to beginning of subsidy period
 - Determine AEI status for pre-April 1, 2021 qualifying events
 - Go back at least 18 months before beginning of subsidy period
 - AEIs on COBRA, declined COBRA or dropped COBRA

#swflhrlaw

Employer Notice Requirements



- AEI based on qualifying event prior to beginning of subsidy period (*cont'd*)
 - AEI can elect COBRA for subsidy period only, if chosen
 - Enroll AEIs electing coverage within 60 days after notice

#swflhrlaw

Employer Notice Requirements

- Notify AEIs 15 – 45 days in advance of expiring COBRA subsidy
 - Due to end of subsidy period on September 30, 2021
 - Due to earlier expiration of AEI's maximum coverage period
 - But not if due to AEI becoming eligible for other coverage



#swflhrlaw

Employer Notice Requirements

- Recommend using Department of Labor model notices
- Penalties of up to \$100/day per AEI for failure to provide notice
- Potential civil liability to AEI who goes uninsured due to notice failure



#swflhrlaw

OSHA Update

- New administrator
- New guidance
- New enforcement
- New rules coming soon



#swflhrlaw

EEOC and DOL Update

- New EEOC Chair & General Counsel
- Hiring for enforcement positions
- New Secretary of Labor
- Wage and hour enforcement enhanced
- Withdrawal of DOL Rules



#swflhrlaw

FFCRA Update

- American Rescue Plan Act of 2021 (“ARPA”) extended, in part, Families First Coronavirus Response Act
 - Emergency Paid Sick Leave Act (“EPSLA”)
 - Emergency Family and Medical Leave Act (“EFMLA”)



#swflhrlaw

FFCRA Update

- Created mandatory leave time, most of it paid, and protections for taking such time off
- Paid leave was funded through employer tax credits
- FFCRA expired on December 31, 2020
- ***Employers are no longer required to provide such leave***

#swflhrlaw



FFCRA Update

- ARPA extends the FFCRA tax credits through September 30, 2021 for employers that voluntarily provide employees with leave
- Scope of the permitted reasons for leave that are eligible for tax credits have been expanded

#swflhrlaw



FFCRA Update

- Under the EPSLA, individuals could get up to 80 hours of paid leave if they were:
 - 1) subject to government quarantine;
 - 2) advised by health care provider to self-quarantine;
 - 3) experiencing symptoms of COVID-19 and seeking medical diagnosis;
 - 4) caring for an individual subject to quarantine/isolation; or
 - 5) caring for a child whose school or childcare is closed due to the coronavirus.



#swflhrlaw

FFCRA Update

- Under EFMLA, up to 12 weeks leave, but limited to leave to care for a child whose school or childcare was closed due to the coronavirus and was limited to 2/3 pay and capped at \$10,000
- Under ARPA, EFMLA expands tax credits for up to 12 weeks for all five of the reasons leave was permitted under the EPSLA (not just childcare)



#swflhrlaw

FFCRA Update

- Can now get tax credits to allow employees to get the COVID vaccine, to recover from adverse effects of the vaccine, or to stay out of work while awaiting COVID test results
- As of April 1, 2021, all time is reset and the cap EFMLA increased to \$12,000



#swflhlaw



Giselle Carson, Esquire
Marks Gray, P.A.

gcarson@marksgray.com

904-398-0900

David Ledermann, Esq.

david.ledermann@henlaw.com

239-344-1192



Scott E. Atwood, Esq.
Employment Group Chair

scott.atwood@henlaw.com

239-344-1287

Katherine "Kati" Cook, Esq.

katherine.cook@henlaw.com

239-344-1364