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MEMORANDUM

TO: OUR CLIENTS

FROM: COOPER, SAPIR & COHEN, P.C.

RE: THE AMERICAN RESCUE PLAN ACT OF 2021 (ARPA) - EMERGENCY PAID SICK LEAVE (EPSL) AND EXPANDED FAMILY MEDICAL LEAVE ACT (EFMLA)

DATE: MARCH 16, 2021

The EPSL and the EFMLA, which applies to all public sector employers and private sector employers with less than 500 employees, expired on December 31, 2020, although employers had the discretion to extend it to March 31, 2021. ARPA, signed into law on March 11, 2021, expands and extends tax credit for those employers that voluntarily provide EPSL and/or EFMLA from April 1, 2021 through September 30, 2021.

Employers who voluntarily adopt the EPSL would be providing a new two week bank of sick days for employees for the six reasons contained in the original FFCRA, which include 1) a quarantine/isolation order due to a COVID-19 diagnosis, 2) to obtain a medical diagnosis or care if experiencing COVID-19 symptoms, 3) a health care provider's recommendation to quarantine, 4) to care for a family member with COVID-19 who is subject to an order of quarantine or who has been recommended to quarantine by a health care provider, 5) if the child's school or child care provider is unavailable because of COVID-19 or 6) the employee is experiencing a substantial similar condition as specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor. ARPA now adds two additional reasons – 7) to obtain a COVID-19 vaccination, or while awaiting the results of a COVID-19 test and 8) to recover from the adverse reactions to the vaccine.

The expanded FMLA under FFCRA, which permitted FMLA leave due to a child's school or childcare provider not being available due to COVID-19, provided for up to 12 weeks leave, the first two weeks of which were unpaid (although the employee could use EPSL), and then up to ten weeks paid at 2/3 of the employee's regular rate of pay, up to \$200.00 per day. Under ARPA, and for those employers who voluntarily opt to

provide the EFMLA, not only is the entire 12 weeks paid at this rate, the paid leave applies to any reason that would qualify for EPSL, not just the child's school or day care provider being unavailable due to COVID-19. The maximum payable to an employee under the EFMLA is \$12,000.00. Remember that an employee's entitlement to the EFMLA depends on whether and to what extent they have available any or all of their 12 weeks of FMLA.

A new provision contained in ARPA would disqualify an employer from claiming tax credits if, in providing EPSL or EFMLA, it discriminates in favor of highly compensated employees, full-time employees, or employees based upon their length of service.

The US Department of Labor is expected to issue regulations or other guidance in the near future, and we will continue to keep you advised.

If you have any questions, please call our office. Stay safe.