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Introduction



Peter A. Jones

Deputy Chair, Labor & Employment

pjones@bsk.com

Syracuse, NY

Putney, Twombly, Hall & Hirson
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New York **Employment Law:** The Essential Guide

Editors

Louis P. DiLorenzo, Esq.
Jeffrey A. Kehl, Esq.

Bond, Schoeneck & King PLLC

Bond Writes Guide on Employment Law

More than 80 attorneys at Bond contributed to write a comprehensive 435-page guide to employment law in New York. Published under the auspices of The New York Bar Association (NYSBA), *New York Employment Law: The Essential Guide* is available to NYSBA members at the discounted price of \$95, and non-members for \$130.

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NEW YORK STATE BAR ASSOCIATION

American Rescue Plan Act – COBRA Subsidy



John C. Godsoe

Member

jgodsoe@bsk.com

Buffalo, NY

COBRA Subsidy – Brief Overview

- Part of the American Rescue Plan Act of 2021 (“ARPA”)
- Subsidy Overview
 - Subsidy Period: April 1, 2021 through September 30, 2021
 - Amount: Subsidy applies to 100% of monthly COBRA cost
 - Eligibility: Must be an assistance eligible individual (“AEI”)
 - Qualifying event is involuntary termination of employment (other than for gross misconduct) or reduction in hours
 - COBRA period includes months during subsidy period
 - Must elect COBRA
 - Notices: New COBRA notice requirements must be satisfied
 - Reimbursement: Claim tax credit against Medicare hospital insurance payroll tax
 - Plans Covered: Group health plans subject to COBRA provisions of ERISA, Code, or PHSA or state laws providing similar continuation coverage

COBRA Subsidy – Brief Overview

- Compliance steps:
 - Identify individuals who lost coverage due to involuntary termination of employment or reduction in hours whose COBRA period includes subsidy period
 - Potential AEIs who either never elected COBRA, or elected COBRA and dropped coverage prior to the end of COBRA period, must be provided with a special COBRA election period
 - Election period begins 60 days following notice from plan administrator
 - Plan administrator must provide notice by May 31, 2021
 - DOL to issue model notices for this purpose by April 10, 2021
 - If elected, coverage commences April 1, 2021

COBRA Subsidy – Brief Overview

- Compliance steps:
 - Update or supplement COBRA election notices to comply with ARPA requirements
 - Determine if alternate coverage option will be provided
 - Administer subsidy eligibility during subsidy period
 - Subsidy ends prior to September 30, 2021 if AEI becomes eligible for other group health plan coverage (other than coverage providing excepted benefits, health FSA, or QSEHRA) or Medicare or if COBRA period ends
 - Affirmative obligation of AEI to notify employer of disqualifying coverage
 - Send new “Notice of Expiration of Period of Premium Assistance” to AEIs prior to end of subsidy (at least 15 but not more than 45 days prior)
 - DOL to issue model notice by April 25, 2021

COBRA Subsidy – Brief Overview

- Compliance steps:
 - Employers subject to federal COBRA laws will claim tax credit against Medicare Hospital Insurance payroll tax
 - For small insured plans not subject to federal COBRA, insurer is entitled to tax credit
- Action Items
 - Coordinate with COBRA administrator, third-party administrator, payroll provider, insurer and other vendors
 - Identify current assistance-eligible COBRA enrollees as well as potential AEIs in preparation for providing 60-day election notice
 - Update COBRA notices
 - Look out for additional guidance

American Rescue Plan Act – Employment Provisions



Adam P. Mastroleo

Member

amastroleo@bsk.com

Syracuse, NY

American Rescue Plan Act

- Extension of tax credits for paid leave (FFCRA)
- Effective April 1, 2021 – September 30, 2021
- Tax credits available for original EFMLA and EPSL reasons, plus:
 - Employee getting COVID vaccine
 - Employee recovering from complications due to receiving the vaccine
 - Employee seeking or awaiting the results of a COVID-19 test or diagnosis IF the employee has been exposed to COVID-19 or the employer has requested such test or diagnosis
- Resets 80 hours of EPSL
- Voluntary

American Rescue Plan Act (Cont)

- Increases the EFMLA credit amount from \$10,000 to \$12,000;
- Expands EFMLA eligibility for all categories;
- Disqualifies employers from the tax credit where they treat highly compensated individuals, full-time employees or employees with more tenure differently

Frequently Asked Questions

- Does the ARPA leave run concurrently with NY's Paid Vaccination Leave?
- Can I claim the tax credit if I only provide EPSL, but not EFMLA?
- Can I claim the tax credit if I only provide paid leave for vaccination, but not any other EPSL qualifying event?

PPP Update



Jeffrey B. Scheer

Member

jscheer@bsk.com

Syracuse, NY

School Update



Kate I. Reid

Member

kreid@bsk.com

Syracuse, NY

School Elections

- Reduced signatures for nominating petitions
 - Union Free/Central School Districts - at least 25 qualified voters or 2% of the voters who voted in the 2019 annual election of the members of the board of education
 - Small City School Districts – 50 signatures
- Absentee ballots

March 19, 2021 CDC Guidance

- Revised physical distancing recommendations to **at least 3 feet between students in classrooms**
- Clarified that ventilation is a component of strategies to clean and maintain healthy facilities.
- Removed recommendation for physical barriers.
- Clarified the role of community transmission levels in decision-making.
- Added guidance on interventions when clusters occur.

New CDC Guidance

- When is 6 ft of distance required?
 - Between adults (teachers and staff), and between adults and students, at all times in the school building. Several studies have found that transmission between staff is more common than transmission between students and staff, and among students, in schools.¹
 - When masks cannot be worn, such as when eating.
 - During activities when increased exhalation occurs, such as singing, shouting, band, or sports and exercise. Move these activities outdoors or to large, well-ventilated space, when possible.
 - In common areas such as school lobbies and auditoriums.

New CDC Guidance

- New York State guidance has not yet been updated to conform
- July 2020 DOH guidance
- July NYSED Guidance
- 6 ft OR barriers

Prom

- No specific guidance for prom 2021!
- July 2020 School Reopening Guidance?
- Non-essential gathering guidance?
 - Beginning April 2 - event, arts and entertainment venues can reopen at 33 percent capacity, up to 100 people indoors and up to 200 people outdoors. If all attendees present proof of negative test prior to entry, capacity can increase up to 150 people indoors and up to 500 people outdoors.
- Indoor/Outdoor Catering Guidance?
 - 50% of occupancy or 150 people, exclusive of employees/staff and COVID testing

Graduation

- No 2021 guidance
- June 14, 2020 Guidance
- Capped at 150 people (outdoor)

Unemployment Update



Paul J. Buehler III

Associate

pbuehler@bsk.com

Albany, NY

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