

# CORONAVIRUS

WEEKLY WEBINAR SERIES



March 30, 2021



1

## Introduction



### **Peter A. Jones**

Deputy Chair, Labor & Employment  
pjones@bsk.com  
Syracuse, NY



2



3

## ARPA COBRA Subsidy— Tax Credit Provisions



### **Daniel J. (DJ) Nugent**

Associate  
dnugent@bsk.com  
Syracuse, NY



4

## ARPA COBRA Subsidy

- Part of the American Rescue Plan Act of 2021 (“ARPA”)
  - Signed by President Biden on March 11, 2021
- 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”)
    - Qualified beneficiary whose qualifying event is either involuntary termination of employment or reduction in hours
    - Eligible for COBRA during subsidy period
    - Must elect COBRA
  - Notices: New COBRA notice requirements must be satisfied
  - Reimbursement: Tax credit against Medicare payroll taxes

5



5

## Tax Credit

- 100% of the subsidy is reimbursed through a credit against quarterly Medicare hospital insurance payroll tax
  - 1.45% Medicare payroll tax
  - Reimbursement includes 2% administrative fee

6



6

## Tax Credit

- Credit claimed by “person to whom premiums are payable”
  - This means the employer with respect to single employer plans
    - subject to the COBRA requirements of ERISA, the Code, or the PHSA, or
    - that are self-funded (partially or fully)
  - This means the plan with respect to a multiemployer plan
  - For all other plans, this means the insurer
    - e.g., small plans solely subject to state continuation laws

7



7

## Tax Credit

- Credit cannot exceed the Medicare hospital insurance tax, reduced by any CARES Act and FFCRA credits taken
  - Credit may not be taken with respect to any amount taken into account as qualified wages under the CARES Act or as qualified health expenses under the FFCRA or ARPA
- If credit exceeds quarterly tax, the credit is refundable
- ARPA includes a provision for the advancement of credits
  - Departments will issue guidance
- An overstatement of the credit is treated as an underpayment of taxes

8



8

## Tax Credit Guidance Needed

- Timing and mechanics of claiming the credit
- Any methods of verifying the correct amount of reimbursements
- Application of the credit to multiemployer plans
- Providing for the reconciliation of advanced credits
- Allowing the credit to third party payors
  - (e.g., professional employer organizations)

9



9

## ARPA – Family Leave and Sick Leave Tax Credit Provisions



### **Stephanie H. Fedorka**

Associate  
sfedorka@bsk.com  
Syracuse, NY



10

## Paid Sick & Family Leave

- **Recall**

- Families First Coronavirus Response Act (“FFCRA”) required covered employers to provide Emergency Paid Sick Leave (“EPSL”) and Expanded Family and Medical Leave (“EFML”) April 1, 2020 – December 31, 2020
  - Covered Employers: Fewer than 500 employees at time leave taken
  - Leave mandate expired on December 31, 2020; extension of payroll tax credits available to employers who voluntarily elect to provide FFCRA style leave
  - Dollar-for-dollar payroll tax credit for most covered employers
    - Governmental employers *not eligible* to claim tax credit
- December 27, 2020 Relief Bill (Consolidated Appropriations Act, 2021) extended availability of payroll tax credits to covered employers who *voluntarily* provided the leave through March 31, 2021



11

## ARPA Changes – Effective April 1, 2021

- **Voluntary:** Still totally voluntary; not new mandate
- **Extension:** Extend payroll tax credits through **September 30, 2021**
- **Expansion:** Three **new** qualifying reasons for leave under both EPSL and EFML for which payroll tax credits can be claimed
  1. To obtain COVID-19 Immunization
  2. To recover from any “injury, disability, illness, or condition related to COVID-19 immunization”
  3. To seek or while awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 *and such employee has been exposed to COVID-19 or the employee’s employer has requested such test or diagnosis*



12

## Paid Sick & Family Leave

- **Expansion of EFML Leave:**
  - Leave can be taken and tax credits claimed for **all** EPSL qualifying reasons
  - Strikes 10-day unpaid leave “waiting period” (recall previously first two weeks of EFML were unpaid before paid leave kicked in)
    - Effectively permitting all 12 weeks of EFML to be paid (and corresponding credits claimed)
- **Increase in EFML Tax Credits:** Increase limit on tax credit for paid family leave wages to \$12,000
  - Currently limited to \$200 per day, up to \$10,000 total per employee
- **Reset for Paid Sick Leave:** Reset 10-day limit for paid sick leave starting April 1, 2021



13

**For EPSL, paid leave at their regular rate or applicable minimum wage, whichever is higher, up to \$511 per day (\$5,110 in the aggregate over a 2-week period) for the following reasons:**

1. Employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. Employee has been advised by a health care provider to self-quarantine related to COVID-19;
3. Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis, seeking or awaiting the results of a diagnostic test for, or medical diagnosis of COVID-19 and such employee has been exposed to COVID-19 or the employee's employer has requested such test or diagnosis, or the employee is obtaining immunization related to COVID-19, or recovering from any injury, disability, illness, or condition related to such immunization.

**For EPSL, paid leave at 2/3 of their regular rate, or 2/3 of the applicable minimum wage, whichever is higher, up to \$200 per day (\$2,000 in the aggregate over a 2-week period) for the following reasons:**

4. Employee is caring for an individual subject to an order described in (1) or self-quarantine in (2) above;
5. Employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19;
6. Employee is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury

**EFML may be taken for any of the above, paid at 2/3 regular rate up to \$200 per day, \$12,000 cap.**



14

## Paid Sick & Family Leave

- **Nondiscrimination Provision:** Employers cannot claim the credits if paid leave provided to employees discriminates in favor of highly compensated employees, full-time employees, or on the basis of tenure with the employer
- **Leave Must Meet Requirements:** ARPA explicitly provides that leave must meet **any** requirements of the law (EPSL or EFML) for tax credits to be claimed.



15

## Highlights – Paid Sick & Family Leave

- **“Governmental Employers”:** Allows 501(c)(1) and 501(a) organizations to claim the tax credits
  - Government employers and their “instrumentalities” still may not claim tax credits
    - Generally all public employers cannot claim credit
    - “Instrumentalities” are subject to 6 factor test (IRS)
  - This change creates a very narrow exception (“organizations created by Act of Congress”)



16

## Common Questions

- Does an employer have to offer both EPSL and EFML to claim the credits?
- Does an employer have to offer the leave benefits for the entire period of April 1, 2021 – September 30, 2021 to claim the credits?
- Does an employer have to reset the 10 day EPSL allotment to claim the credits?



17

## Vaccination Update



### **Andrew D. Bobrek**

Member  
abobrek@bsk.com  
Syracuse, NY



18

## Vaccination Issues in New York

- Mandate?
  - Reasonable Accommodation Obligations
  - Employers with CBAs
  - Private vs. Public Sector
  - Practical Considerations
- Verification?
- Paid Leave – NY law & Expanded FFCRA
- Federal Lawsuit / EUA Notification



19

## Update from Albany



### **Caitlin A. Anderson**

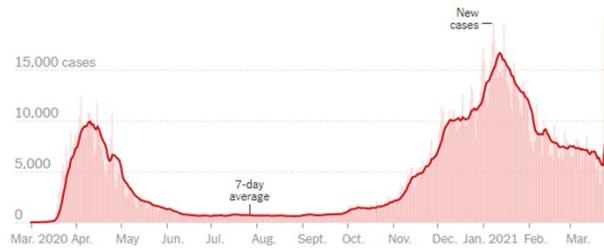
Associate  
kreid@bsk.com  
Albany, NY



20

# New York Coronavirus Map and Case Count

Updated March 30, 2021, 7:46 A.M. E.T.



The New York Times

	TOTAL REPORTED	ON MARCH 29	14-DAY CHANGE
<b>Cases</b>	1.8 million+	8,972	+45% ↗
<b>Deaths</b>	49,648	111	+12% ↗
<b>Hospitalized</b>		5,401	-3% →

Day with reporting anomaly. Hospitalization data from the U.S. Department of Health and Human Services; 14-day change trends use 7-day averages.



21

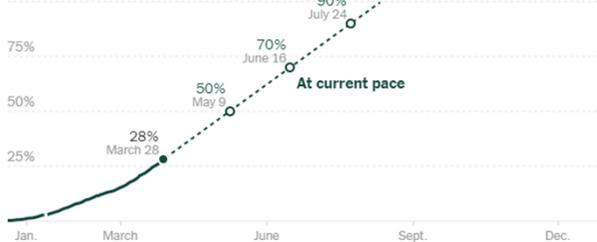
## Vaccine Rollout

### When a given share of the U.S. population might be at least partially vaccinated

The current vaccination rate is based on the average daily increase in newly vaccinated people over the past week. This includes people given the single-dose Johnson & Johnson vaccine and the first shot of the two-dose series made by Moderna or Pfizer-BioNTech.

7-day average: 1.75 million newly vaccinated people

100% of U.S. population



Source: Centers for Disease Control and Prevention | Note: Data from Dec. 20 to Jan. 12 are for all doses administered. Data for Jan. 13 is unavailable. Projections could change if additional vaccines are authorized.

- 29.6% of New Yorkers have received the first shot.
- 15.2% are fully vaccinated.

The New York Times



22

## Vaccine Eligibility

- TODAY: All NYers 30 and older are eligible
- APRIL 6: All NYers 16 and older are eligible



23

## Travel Advisory

- Remember – April 1, domestic travel quarantine requirement ends.
  - NO Executive Order/Updated Guidance has been issued yet.
- **International Travel Quarantine is required:** travelers must quarantine for either (1) 10 days or (2) 7 days, with a test 3-5 days after travel.
  - NO ESSENTIAL WORKER EXCEPTION!



24

## Gatherings

- April 2: Events, arts and entertainment venues may open at up to 33% capacity with up to 100 people indoors, 200 people outdoors, or 150 people indoors and 500 people outdoors with testing.



25

## Marijuana Legalization

- Big picture overview:
  - Bill is moving through committees today; passage will be this week.
- How does it work?
  - People 21 + may purchase, possess and ingest/smoke cannabis.
  - Publicly may possess up to 3 ounces of cannabis/24 oz. of marijuana concentrates.
  - Localities may opt out of retailer sales/cannabis cafes but will not receive tax revenue if they do so.
  - Localities may prohibit smoking in parks (think cigarettes). No smoking at work, school or in the car.



26

## Marijuana Legalization

- What else?
  - At home – may store up to five pounds of cannabis, may grow 3 mature plants, 3 immature plants. Need to wait for regulations.
  - Regulators have 18 months to set regulations for adult-use.
  - Taxes: 9% state tax, 4% local tax (1% to counties, 3% to cities, towns).
  - Driving tests: DOH is to develop/certify a test for driving.
  - Expungement of marijuana convictions.
  - Licenses: 50% to go to MWBEs, service-disabled veterans and financially distressed farmers.



27

## Marijuana Legalization – Employment Law Implications



### **Michael D. Billok**

Member  
mbillok@bsk.com  
Saratoga Springs, NY



28

## Unemployment Update



### Paul J. Buehler III

Associate  
pbuehler@bsk.com  
Albany, NY



29

## Unemployment Updates



30

## Previous Partial UI Eligibility

- Earn less than \$504 per week
- Impact of Days Worked:

<u>Days Worked Per Week</u>	<u>Reduction in Benefits</u>
0	0%
1	25%
2	50%
3	75%
4+	100%



31

## Previous Partial UI Eligibility

- Still must earn less than \$504 per week
- Hours-based approach:

<u>Hours Worked Per Week*</u>	<u>Number of Days to Report</u>	<u>Reduction in Benefits</u>
0-4	0	0%
5-10	1	25%
11-20	2	50%
21-30	3	75%
31+	4	100%



32

## ARPA COBRA Subsidy – Tax Credit Provisions

DJ Nugent, [dnugent@bsk.com](mailto:dnugent@bsk.com)

## ARPA Family Leave and Sick Leave Tax Credit Provisions

Stephanie Fedorka, [sfedorka@bsk.com](mailto:sfedorka@bsk.com)

## Vaccination Update

Andy Bobrek, [abobrek@bsk.com](mailto:abobrek@bsk.com)

## Update from Albany

Caiti Anderson, [canderson@bsk.com](mailto:canderson@bsk.com)

## Marijuana Legislation

Mike Billok, [mbillok@bsk.com](mailto:mbillok@bsk.com)

## Unemployment Update

Paul Buehler, [pbuehler@bsk.com](mailto:pbuehler@bsk.com)



33

The information in this presentation is intended as general background. It is not to be considered as legal advice. Laws change often and information becomes rapidly outdated.

All rights reserved. This presentation may not be reprinted or duplicated in any form, without the written authorization of Bond, Schoeneck & King PLLC.



34