



# Payroll Insights

## Employment tax news to guide you now and for the future

March 2021

### **KPMG report: Employer's role in Rescue Act COBRA subsidies and tax credits**

The economic effects of the coronavirus (COVID-19) pandemic over the past year have presented several workforce challenges including unfortunate situations when individuals who were involuntarily terminated or had their hours reduced must make difficult decisions regarding the costly continuation of employer-sponsored healthcare via COBRA benefits at a time when they are no longer earning income during the pandemic.

The American Rescue Plan Act of 2021 (Rescue Act) which was signed into law March 11, 2021, contains a particularly helpful provision for such affected individuals, that subsidizes the cost of such continued COBRA benefits—with employers being a significant part of that process. This is reminiscent of the 2009 COBRA subsidies during that economic recovery.

For more information see the KPMG [TaxNewsFlash](#)

### **Compensation and benefits-related provisions in COVID relief bill**

The U.S. House of Representatives today approved the Senate amendment to H.R. 1319, the "American Rescue Plan Act of 2021" (Rescue Act)—thus, completing congressional action on the legislation.

Read [TaxNewsFlash](#)

The Rescue Act includes several compensation benefit-related provisions, such as measures that:

- Extend and expand the employee retention credit (ERC) through December 31, 2021
- Extend and expand the paid sick leave and the expanded Family Medical Leave Act (FMLA) credit as originally provided by the "Families First Coronavirus Response Act" (FFCRA) through September 30, 2021

- Expand the "covered employee" definition under section 162(m) thereby limiting the deduction for certain employee compensation for public companies for tax years beginning after December 31, 2026

See the KPMG [TaxNewsFlash](#) for details on the Compensation and Benefits provisions.

### **Notice 2021-20 provides much anticipated guidance regarding the employee retention credit for 2020**

The IRS on March 1, 2021, released an advance version of Notice 2021-20 as guidance regarding the employee retention credit (ERC) with respect to the 2020 calendar year.

Although Notice 2021-20 formalizes much of the information included in previously issued "frequently asked questions" (FAQs) available on the IRS website, the notice contains further clarifications of the FAQs by constructing a safe harbor approach while also addresses recent retroactive changes regarding interaction with employers that received a Paycheck Protection Program (PPP) loan.

Read a [March 2021 report](#) prepared by KPMG LLP that highlights some of the more significant clarifications in Notice 2021-20.

### **Notice 2021-15: Relief for health FSAs and dependent care assistance programs under "cafeteria plans" (COVID-19)**

The IRS released an advance version of Notice 2021-15 to clarify application of provisions of the "Taxpayer Certainty and Disaster Tax Relief Act of 2020" (enacted as part of the "Consolidated Appropriations Act, 2021" (Pub. L. No. 116-260)) which provides temporary special rules for health flexible spending arrangements (health FSAs) and dependent care assistance programs under section 125 cafeteria plans.

For more details see the KPMG [TaxNewsFlash](#).

## IRS Form 941, Employer's Quarterly Federal Tax Return and related Instructions

The IRS has issued the final first quarter 2021 Form 941, *Employer's Quarterly Federal Tax Return* and related instructions as of March 2021.

- [2021 Form 941](#)
- [Instructions for Form 941](#)
- [Instruction for Schedule B \(Form 941\)](#)
- [Instructions for Schedule R \(Form 941\)](#)

Some of the most notable changes include updates and extensions as they relate to the Consolidated Appropriations Act of 2021. Several of these changes include extensions for the FFCRA tax credit for emergency sick leave and the employee retention credit. In addition, guidance was provided on the treatment of repayments of both the employer and employee social security deferrals.

It is important that employers match the appropriate form/instructions to the appropriate quarter to ensure the proper treatment and filing of their quarterly returns.

### State update

#### Connecticut Remote-Worker Bill

On March 5, 2021, the Governor of Connecticut signed [House Bill \(HB\) 6516](#), *An Act Mitigating Adverse Tax Consequences Resulting From Employees Working Remotely During COVID-19, and Concerning the Removal of Liens on the Property of Public Assistance Beneficiaries and a Three-Tiered Grants in Lieu of Taxes Program* into law.

This bill retroactively addresses the tax implications for Connecticut employees working from home in 2020. Tax credits may be available for those residents who normally work in other states and still may owe tax to these in state(s) in 2020. Further, this bill stated that the Connecticut Department of Revenue Services should not use an employee working in Connecticut due to COVID-19 as a consideration when determining if an employer has nexus in Connecticut for the determination of imposing tax.

Please note, HB 6516 is effective as of January 1, 2020 and only applies to the 2020 tax year.

### Locality Update

#### Philadelphia Predictable-Pay

Philadelphia Department of Labor [announced](#) on March 1, 2021 that its Office of Worker Protections will begin enforcing the predictability pay requirement from Philadelphia's Fair Workweek law on June 1, 2021. Predictability pay is compensation that covered employers must pay to service, retail or hospitality workers for employer related changes to a posted workweek schedule.

In Philadelphia, this law will apply to those employers in the service, retail or hospitality industry, with 250 or more employees worldwide and thirty or more locations worldwide. The City provided further guidance stating; "covered employers are required to post employee schedules 14 days in advance of the workweek. Changes to this posted schedule that come from an employer's request is an employer-initiated change." Changes may include reduced hours, changes in a scheduled work location, adding additional hours with employee consent, and changes to an on-call shift, and may also include not calling an employee in to work. These changes may result in additional compensation for the employee. Details about how each employer-initiated change is compensated can be found [here](#). In addition, employers must allow employees to refuse to work additional hours not included in the posted schedule and offer existing employees the right to additional work shifts before hiring new employees.

Additional details and resources can be found [here](#).

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