

## HR UPDATE

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New Jersey Retirement Program Mandate



The American Rescue Plan



Employer Liability for COVID-19 Transmission in the Workplace Revisited

## New Jersey Retirement Program Mandate

Under the New Jersey Secure Choice Savings Act passed by Governor Murphy, New Jersey companies who have been in business two or more years and have twenty-five or more employees are now required to offer their employees access to a retirement plan. The law is intended to assist New Jersey workers with saving for retirement while minimizing the burden on employers. It is unclear at this point whether the law will work as designed.

The law established the New Jersey Secure Choice Savings Fund, a government organized retirement fund for New Jersey employees, and the Secure Choice Savings Board to oversee it. New Jersey employers have the option to enroll their employees in the Fund or pick another private retirement fund option. The Fund is intended to be a low cost and low maintenance retirement plan option for employers.

If an employer chooses to enroll in the New Jersey Secure Choice Savings Program, its employees are automatically enrolled in the Fund at 3% of their payroll unless the employees individually opt out of the program. The contributions are paid into an IRA overseen by the Board. An employee's annual contribution to the Fund is capped at \$6,000 or \$7,000 based upon the employee's age. The higher cap applies to employees who are 50 years of age or older. These are pre-tax contributions. Employees are not allowed to borrow from the Fund and employers are not allowed to make contributions.

Employers who enroll in this public option will still have administrative responsibilities. For instance, employers are required to complete an annual employee census. Throughout the year, employers must track which employees have opted in or out of the plan and an employee's eligibility to enroll. Employers must also offer open enrollment on a periodic basis. This is not an all-inclusive list of employer obligations under the new law.

An employer also has the option to select and establish a private retirement fund for its employees as long as employer establishes the fund within the timeframe required by law.

Employers have nine months after the Board opens the program for enrollment to establish their retirement programs. The Board may open the program by the end of this month, giving employers until the end of 2021 to put a retirement plan in place. It is possible these deadlines may be extended due to the pandemic. Companies who fail to comply with the requirements of the law could be subject to financial penalties.

If companies have not done so already, they should start investigating how to efficiently and affordably implement a retirement program in compliance with New Jersey law.

## The American Rescue Plan

In many ways, the American Rescue Plan signed into law by President Biden on March 11, 2021 is a larger version of the stimulus plan passed in December. It is a massive bill and this article will highlight a large portion of what it contains.

The enhanced federal jobless benefits that the December stimulus continued until March 14, 2021 are now extended through September. The amount of the weekly benefit remains at \$300. This new stimulus also provides a new tax waiver on the first \$10,200 of an individual's unemployment benefits.

This stimulus includes an additional \$20 billion to establish a national vaccine program, including launching community vaccination centers, deploying mobile vaccination units to remote communities, and providing funding for 100,000 workers to operate the program. It also includes an additional \$50 billion for national COVID testing.

In addition to the \$82 billion in aid to schools in the December stimulus, this plan includes \$170 billion to K-12 schools

and universities to help with remote learning and future reopening.

States and local governments will receive \$350 billion in aid. This is one category of aid that was entirely absent from the December stimulus.

In addition to the \$600 direct payments in the December stimulus, the American Rescue Plan includes direct payments of \$1,400. These direct payments are limited to heads of households earning less than \$112,500 per year or married couples filing jointly earning less than \$150,000 per year.

This stimulus plan also includes tax subsidies to families of \$3,600 per child or \$3,000 per child, depending upon the age of the children.

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Finally, this stimulus provides \$34 billion in subsidies for Americans who have purchased health insurance through the Affordable Care Act. These subsidies will run through the end of 2022. The government is also going to pay COBRA premiums for American who have been laid off.

What is not in the stimulus? The American Rescue Plan does not further extend the moratorium on evictions set to expire at the end of March 2021. The stimulus also does

not contain a liability shield for businesses concerned about COVID-19 related negligence lawsuits and, very significantly, it does not contain a federal increase in the minimum wage.

There is at least some support for the stimulus among the broader business community where it is hoped that U.S. households will inject a large portion of their direct payments back into the economy.

## COVID-19 Employer Liability Transmission in the Workplace Revisited

In a previous issue, this newsletter indicated that the worker's compensation system was likely to be the mechanism for redress for employees who became ill or died from COVID-19 contracted in the workplace. Now, a year into the pandemic, this newsletter is revisiting this topic to see how circumstances have developed.

In mid-February, the Wall Street Journal reported that worker's compensation insurance carriers are denying a "significant percentage" of COVID-19-related claims. The insurance carrier's most common defense is the employee's inability to prove that he or she contracted COVID-19 in the workplace.

In order to assist employees, some states, including New York and New Jersey, have passed laws exempting certain categories of employees from having to prove a direct connection between their COVID-19 diagnosis and their workplace. Even in these states, however, worker's compensation claims are being denied, albeit at lower rates.

As the Wall Street Journal reports, in Texas, where there is no presumption of eligibility for workers, more than 32,000 COVID-19-related claims were filed through December 6, 2020 and insurers denied 45% of those claims. By contrast, in California, where automatic eligibility exists for a broad spectrum of workers, only 26% of 93,470 claims were denied.

Meanwhile, despite hundreds of thousands of COVID-19-related claims filed in 2020, these claims were offset by a steep drop in non-COVID claims due to layoffs, shutdowns and remote work which reduced workplace accidents. As a consequence, some insurers are lowering their premiums for coverage in 2021. Other insurers remain cautious, concerned that there may be a future wave of claims

from employees pursuing large and ongoing medical and wage-replacement awards.

While employees wait for their worker's compensation claims to wind their way through worker's compensation systems across the country, negligence lawsuits against employers continue to work their way through the courts.

The U.S. District Court for the Eastern District of New York recently dismissed a lawsuit brought by Amazon workers demanding that the company increase COVID-19 protections in the workplace. Workers also alleged Amazon failed to timely pay workers who took paid leave for COVID-19 related reasons. The workers relied upon a public nuisance theory which permits the government to intervene where there are public safety threats.

The Judge essentially ruled that worker complaints related to safety in the workplace are more properly resolved through the Occupational Safety & Health Administration and issues related to worker injuries are the province of New York's worker's compensation law. This decision suggests that workers' remedies will remain within the systems already in place pre-pandemic to address worker safety, illness and injury.

As we look toward a time when workers and employers do not need to concern themselves with daily COVID-19 transmission in the workplace, we continue to wait and see how our worker's compensation systems and courts ultimately respond to this crisis and resolve these disputes.

To read the Wall Street Journal article from February 14, 2021, please go to <https://www.wsj.com/articles/why-so-many-covid-19-workers-comp-claims-are-being->