The Health and Economic Recovery Omnibus Emergency Solutions Act "HEROES Act"

As of 5-14-2020

- **The Paycheck Protection Program:** The bill doesn't add more money for the PPP for small businesses since $310 billion was allocated for the program on April 22. It does extend the program from June 30 to December 31, 2020. The proposal expands PPP eligibility to include all nonprofits, including 501(c)(6)s. SHRM sent a letter to Congress on May 5 urging the expansion of PPP eligibility to include 501(c)(6). The letter was signed by all 50 State Councils and 149 Chapters.

- **An extension of expanded unemployment insurance:** The CARES Act expanded unemployment insurance by $600 per week until the end of July and made more people, including independent contractors and the self-employed, eligible for it. This bill would extend expanded benefits through January 31, 2021 and put in a so-called "soft cutoff" to ensure some individuals could get benefits through March 2021. Many states need additional money to help cover their portion of unemployment benefits, with many states' coffers depleted due to the high demand, the bill allocates $925 million to states to assist with processing claims. SHRM advocated in our April 20 letter to Congress for additional funding to states to offset increased expenses of unemployment benefits.

- **Health Flexible Spending Arrangements (FSAs):** The bill would allow taxpayers to carry up to $2,750 in unused benefits or contributions forward into 2021. In addition, allows participants to make one-time elections for any reason to a health FSA between the date of enactment and December 31, 2020 and provides an extension of the grace period for the 2020 plan year to 12 months after the end of the 2020 plan year. Extension of the grace period will allow benefits or contributions from these arrangements to be used for expenses incurred up to 12 months after the end of the plan year. SHRM advocated in our April 20 letter to Congress for flexibly of FSA accounts, including increasing the carryover amount.

- **Dependent Care Flexible Spending Arrangements (DCFSAs):** This bill would allow participants to make changes to elections and carry over up to the annual maximum amount of unused dependent care assistance benefits or contributions from 2020 to 2021. Like health FSAs, provides an extension of the grace period to allow benefits or contributions from DCFSAs to be used for expenses incurred up to 12 months after the end of the plan year.

- **Family and Medical Leave Act:** This bill amends the Family and Medical Leave Act (FMLA) by temporarily suspending, until December 31, 2022, the current 1,250 hour eligibility requirement and reduces the tenure eligibility requirement from 12 months to 90 days under non-emergency Family and Medical Leave Act (FMLA). The bill also clarifies that public agencies are covered under the FMLA, regardless of the number of employees. The bill also clarifies that an employee shall have access to both 12-weeks of non-emergency FMLA and 12-weeks of Emergency Paid Family and Medical Leave Act (EPFMLA) in a calendar year while EPFMLA is in effect.

- **Emergency Paid Family and Medical Leave Expansion Act:** The bill extends the availability of Emergency Family and Medical Leave benefits from December 31, 2020 to December 31, 2021. The bill also amends the Families First Coronavirus Response Act (FFCRA) by removing the 500 employee threshold – leave requirements will apply to all employers regardless of size while removing exemptions for small businesses and healthcare providers. The bill also expands the qualifying reasons for employees to utilize the leave to include: (1) self-isolate because they were diagnosed with COVID-19, (2) obtain a medical diagnosis or to care for symptoms of COVID-19, (3) comply with a recommendation or order to self-isolate because physical presence at work would jeopardize the health of the employee, other employees, or a person in the employee's household, (4) care for a family member who is self-isolating, (5) care for a child whose school has closed or child care provider is unavailable due to COVID-19, or (6) care for a family member who is individual with a disability or senior citizen whose place of care or direct care provider is unavailable. The bill eliminates provisions that restrict employees from exercising a private right of action against employers, with fewer than 50 employees.

- **Intermittent Leave:** The bill clarifies that employees can take leave intermittently or on a reduced work schedule, regardless of a previous agreement between an employer and employee.

- **Emergency Paid Sick Leave:** This bill extends the availability of emergency paid sick leave from December 31, 2020 to December 31, 2021. Allows eligible employees to use paid sick leave for the uses allowed under the emergency FMLA (see above). For each 12-month period, entitles eligible full-time employees to two workweeks (80 hours) of emergency paid sick leave. For each 12-month period, eligible part-time employees are entitled to the hours of emergency paid sick leave that equals the typical number of hours that they work in a typical two-week period. Ensures employees receive emergency paid sick leave in addition to any existing employer-provided paid leave. Allows employers to require requests for paid sick leave to be supported by basic documentation, but not before 7 days after the employee has returned to work. Requires employees to provide their employers with notice of need to take leave as soon as is practicable. Clarifies that full emergency paid sick leave is available to employees where they begin employment with a new employer. Requires employers to restore employees to their positions after returning from paid sick leave. Removes exemptions for large employers, employers with 50 or fewer employees, healthcare providers and clarifies that non-profits are covered employers

- **COBRA subsidies:** The bill funds approximately nine months of full premium subsidies for the existing health insurance program COBRA, which allows laid-off or furloughed employees to stay on their health insurance plans. COBRA is typically prohibitively expensive; this bill would make it much more affordable for workers losing their health insurance along with lost jobs. SHRM is a member of the Partnership for Employer-Sponsored Coverage (P4ESC), which sent a letter to Congress and the Administration supporting temporary COBRA subsidies. Absent COBRA subsidies there will be complexity and adverse health selection risks, which could lead to higher health care premiums in the future.

- **More money for small businesses:** The bill includes $10 billion for grants for small businesses that haven't received funds from the Paycheck Protection Program.

- **Payroll credit for certain fixed expenses of employers subject to closure by reason of COVID-19:** Provides a 50% refundable payroll tax credit for qualified fixed costs. Qualified fixed costs include covered rent obligations, covered mortgage obligations, and covered utility payments. This credit is limited to employers with no more than 1,500 full-time equivalent employees or no more than $41,500,000 in gross receipts in 2019. Additionally, employers must be subject to a full or partial suspension due to a COVID-19 government order or have a decline in gross receipts of at least 20% compared to the same calendar quarter of the preceding year. This credit is phased in for employers with a decline in gross receipts between 10% and 50%.

- **Credits for paid sick leave and family leave:** Extends the refundable payroll tax credits for paid sick and family leave, enacted in the Families First Coronavirus Response Act, through the end of 2021. The bill makes a number of changes to paid sick and family leave credits including increasing the rate for caregivers of individuals subject to a coronavirus related stay at home order and parents providing for children affected by a coronavirus related school closure and allowing employers to claim up to $12,000 in refundable payroll tax credits, rather than $10,000, among other changes.

- **Retirement Related Provisions:** Several retirement provisions are included in the bill, including further relief from required minimum distributions (RMDs) and aid for struggling multiemployer pension plans. The bill would waive required minimum distributions from defined contribution plans and IRAs for 2019; waives the 60-Day Rule in case of Rollover of Otherwise Required Minimum Distributions in 2019 and 2020. This provision further expands the 2020 RMD relief in the CARES Act by providing that:

    - The RMDs made for 2019 would be permitted to be rolled back to a plan or IRA without regard to the 60-day requirement if the rollover is made by November 30, 2020.
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  The bill creates a special partition program that would expand PBGC's existing authority, increase the number of eligible plans, and simplify the application process—allowing more troubled plans to obtain relief. Under the special partition program, a plan would receive enough financial assistance to keep it solvent and well-funded for thirty years—with no cuts to the earned benefits of participants and beneficiaries. Plans that previously cut benefits would have to restore them to the retirees who earned them.