Fiscal 2021 Omnibus and COVID-19 Relief

As of 12-22-2020

On Monday, December 21, Congress passed a year-end bill to fund the government through September 30, 2021 and provide economic relief in response to the coronavirus pandemic. The bipartisan package includes $1.4 trillion to fund the government, $900 billion for coronavirus relief and other provisions. SHRM members advocated for several workplace-related proposals that are included in the final package during the Volunteer Leaders Business Meeting Capitol Hill Day. Below is a summary of the workplace provisions included in the bill.

- **The Paycheck Protection Program (PPP):** An additional $284 billion is allocated for the PPP. In addition, PPP eligibility is expanded to include all nonprofits, including 501(c)(6) organizations. SHRM sent a letter to Congress on May 5 urging the expansion of PPP eligibility to include 501(c)(6) organizations. The letter was signed by all 50 State Councils and 149 Chapters. Businesses that already received a PPP loan will be eligible to get a second one under the new terms. Some of the PPP funds will be set aside for the smallest businesses and community-based lenders and provides $20 billion in Economic Injury Disaster Loans grants for smaller businesses.

- **Health and dependent care flexible spending arrangements:** The bill allows taxpayers to rollover unused amounts in their health and dependent care flexible spending arrangements from 2020 to 2021 and from 2021 to 2022. This provision also permits employers to allow employees to make a 2021 mid-year prospective change in contribution amounts. SHRM advocated in our April 20 letter to Congress for flexibly of FSA accounts, including increasing the carryover amount.

- **Work Opportunity Tax Credit (WOTC):** The bill extends WOTC through December 31, 2025. WOTC is a federal tax credit available to employers that hire and retain individuals from certain groups that have consistently faced significant barriers to employment. The WOTC helps both employers that are experiencing labor shortages and certain groups of people who need assistance finding jobs, such as the long-term unemployed, the formerly incarcerated, individuals with disabilities and military veterans.

- **Employer-provided student loan repayment:** The CARES Act temporarily allowed employers to provide student loan repayment as a benefit to employees through December 31, 2020. Under the provision, an employer may contribute up to $5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The $5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision is extended through December 31, 2025.

- **Employer credit for paid family and medical leave:** The Tax Cuts and Jobs Act of 2017 provided for a federal tax credit for employers that provide paid family and medical leave to their employees. This bill extends the employer credit through December 31, 2025 and applies to wages paid in taxable years beginning after December 31, 2020.

- **Employer credit for paid sick leave and family leave:** The Families First Coronavirus Response Act provided a refundable payroll tax credit for mandated paid sick and family leave. The bill extends the tax credit through March 2021 for employers that continue to voluntarily offer paid sick and family leave to their employees.

- **An extension of expanded unemployment insurance:** The bill extends two Coronavirus Aid, Relief, and Economic Security Act (CARES Act) unemployment programs for 11 weeks. Specifically, the bill provides $300 per week for all workers receiving unemployment benefits, through March 14, 2021. The bill also extends the Pandemic Unemployment Assistance (PUA) program, with expanded coverage to the self-employed, gig workers, and others in non-traditional employment, and the Pandemic Emergency Unemployment Compensation (PEUC) program, which provides additional weeks of federally-funded unemployment benefits to individuals who exhaust their regular state benefits. Additionally, the bill increases the maximum number of weeks an individual may claim benefits through regular state unemployment plus the PEUC program, or through the PUA program, to 50 weeks. The bill also provides an extra benefit of $100 per week for certain workers who have both wage and self-employment income but whose base UI benefit calculation doesn't take their self-employment into account.

- **Extension of the employee retention tax credit:** The bill extends (through June 30, 2021) and expands the refundable Employee Retention Tax Credit (ERTC), which was established in the CARES Act. The credit rate is increased from 50 percent to 70 percent of qualified wages; expands eligibility for the credit by reducing the required year-over-year gross receipts decline from 50 percent to 20 percent and provides a safe harbor allowing employers to use prior quarter gross receipts to determine eligibility; increases the 100-employee delineation for determining the relevant qualified wage base to employers with 500 or fewer employees, and allows businesses with PPP loans to qualify, among other changes.

- **Defined contribution retirement plans:** The bill includes a temporary rule preventing partial plan termination for employers who provide defined contribution retirement plans. Usually, an IRS assessment of plan termination is triggered whenever employee turnover exceeds 20 percent. This provision would defer assessments until March 2021, to give employers time to restore at least 80 percent of their workforce and avoid termination, significant costs and administrative expenses.

- **Surprise medical bills:** The bill includes provisions to end the practice of surprise medical billing. It would hold patients harmless from surprise bills, including from air ambulance providers and prohibit out-of-network providers from "balance billing" unless they give patients 72-hour notice of their network status and an estimate of the charges. Most significant to employer-sponsored health plans is the bill allows for an independent dispute resolution (IDR) process to address surprise medical billing. Under an IDR process, the self-insured employer, not the contracted insurance carrier, would be responsible for settling claims disputes.

- **Deferred payroll taxes:** On August 8, 2020, the President of the United States issued a memorandum to allow employers to defer withholding employees' share of social security taxes from September 1, 2020 through December 31, 2020, and required employers to increase withholding and pay the deferred amounts ratably from wages and compensation paid between January 1, 2021 and April 31, 2021. Beginning on May 1, 2021, penalties and interest on deferred unpaid tax liability will begin to accrue. This bill extends the repayment period through December 31, 2021 and penalties and interest on deferred unpaid tax liability will not begin to accrue until January 1, 2022.

- **Deduction for business meals:** The bill provides a temporary allowance of full deduction for business meal food and beverage expenses provided by a restaurant that are paid or incurred in 2021 and 2022. Currently, the deduction is available for only 50 percent of such expenses.