What Benefits Attys Should Know About The New COVID Law

By **Emily Brill**

Law360 (March 12, 2021, 7:31 PM EST) -- The Biden administration's $1.9 trillion pandemic stimulus package beefs up restrictions on corporations' ability to write off executives' pay during tax season, tosses a long-awaited lifeline to struggling union pension plans and extends funding deadlines for corporate pension plans.

Here's what benefits attorneys should know about the American Rescue Plan.

It Shrinks Exec Comp Write-offs

The landmark relief legislation, one of the largest stimulus packages in U.S. history, underwent several notable changes in the U.S. Senate after its initial passage in the House.

One of those alterations was a new section on executive compensation that further restricted corporations' ability to deduct higher-ups' pay on their taxes.

This section expanded the scope of Section 162(m) of the Tax Code, banning corporations from writing off more than $1 million of the compensation paid to not just the chief executive officer, chief financial officer, and three other highest paid officers, as was already the case, but an additional five highest-paid employees beyond that. The provision takes effect in 2027.

The section likely won't change corporations' executive pay practices much, if at all, but it will "raise the stakes a little bit when you're trying to figure out how much to pay an executive," said Brian Pinheiro, the leader of Ballard Spahr LLP's employee benefits and executive compensation group.

"It's not like companies are going to pay their executives less money. It'll just become more costly to pay executives, because now you're paying them with non-deductible dollars," Pinheiro said.

It Saves Union Pension Plans

The American Rescue Plan's **marquee benefits provision** remained relatively unchanged as it moved from the House to the Senate, delivering an $81.2 billion fix for the union pension plan funding crisis that's been nearly a decade in the making.

Union retirees and the groups that advocate on their behalf said they have a lot to celebrate now that the fix is on the books, setting up the federal government to provide direct assistance to roughly 200 financially struggling union pension plans, also called multiemployer plans.

"To say that we are ecstatic is an understatement," said Karen Friedman, executive director of the Pension Rights Center, in a statement after the American Rescue Plan's passage. "We have worked with grassroots activists and allied organizations for eight long years to push for a solution to the multiemployer crisis and we are now breathing a long sigh of relief that finally, finally Congress has acted to save their promised benefits."

Robert M. Projansky, the co-chair of Proskauer Rose LLP's employee benefits and executive compensation group, said the fix is "very significant" in light of the security it provides to both retirees and the Pension Benefit Guaranty Corp., the federal government's insurance program for pension plans.

"If those most troubled plans went insolvent, which they were bound to do, the PBGC itself would have become insolvent, and the backstop provided to every single multiemployer plan would have disappeared," Projansky said. "The failure of these plans would have been devastating."

It Does Other Things

The American Rescue Plan's other benefits provisions impact both laid-off and working employees, offering full health insurance subsidies to workers who've lost their jobs, changing pension plans' funding rules and letting workers spend more on dependent care without getting taxed on it.

The subsidies, which let laid-off workers stay on their former employer's health plan at no cost to them, are available from April 1 to Sept. 30. The federal government provided similar subsidies in 2009 after the mass job losses of the 2008 market crash.

Meanwhile, the pension rule changes give corporations a longer time to make up for funding shortfalls in their pension plans. Some retirees **voiced their displeasure** with these changes when the House approved them, saying they're bound to make pension plans less stable.

But the final iteration of the American Rescue Plan removed one of the proposals in the House version, which would have frozen cost-of-living adjustments to the maximum contribution limits for 401(k) plans and pension plans starting in 2030. Those limits on total employer and employee contributions are currently set at $58,000 for 401(k) plans and $230,000 for pension plans.

Aside from the subsidies and pension funding rule changes, the stimulus law allows workers to set aside more money to fund childcare and other forms of dependent care without getting taxed on it. The law accomplishes this by increasing the cap on contributions to flexible spending accounts devoted to funding dependent care.

This provision of the American Rescue Plan will likely have a "sweeping" impact, since most corporations make these types of benefits an option for their workers.

"Almost every large employer has a cafeteria plan that has dependent care FSAs," said Dannae Delano, a partner at The Wagner Law Group, referring to a type of employee benefit plan that lets workers pick from a group of pre-tax benefit vehicles.

--Editing by Emily Kokoll and Kelly Duncan.

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