



## CUT AND PASTE POST December, 2021

### “Build Back Better” and HR Management

On November 19, 2021, the U.S. House of Representatives passed the Build Back Better Act (BBBA) ([H.R. 5376](#)). The bill is now on its way to the Senate for action.

According to an article on the *JD Supra* website, the BBBA will undergo significant change at the Senate, but employers need to be aware of the following HR provisions in the 2400+ page House version.

#### *Universal Paid Family and Medical Leave*

- The BBBA currently provides 4 weeks of guaranteed government-paid family and medical leave (maximum benefit of approximately \$800 per week). Unlike the Family and Medical Leave Act (FMLA), this leave would apply to all employers, and employees would not need to complete any minimum length of service to be eligible. This leave would also be available to self-employed workers.
- In addition to providing this new paid leave, the BBBA would broaden the FMLA definition of “family member” to include siblings, grandparents, and “any other individual who is related by blood or affinity and whose association with the individual is equivalent of a family relationship.”

#### *Wage and Hour*

The BBBA would significantly increase civil penalties for violations of the Fair Labor Standards Act. For violations of Child Labor laws, the penalty would increase to \$132,270 (penalties for violations resulting in death or serious injury would increase to \$601,150.) Penalties for willful or repeated violations of minimum wage or overtime rules would increase to \$20,740 and penalties for tip violations would rise to \$11,620.

#### *Workplace Safety*

The BBBA would increase the maximum penalties for ‘willful’ and ‘serious’ violations of the Occupational Safety and Health Act, as follows:

- “Willful” violations: \$700,000; up from the current inflation-corrected penalty of \$136,653.
- “Serious” violations: \$70,000; up from the current inflation-corrected penalty of \$13,653.

#### *Immigration Reform*

- Undocumented individuals could receive provisional work permits under a process known as parole, which allows people to stay in the U.S. for 5 years with an option to extend for another 5 years.
- The BBBA currently includes long-term work permits and protections for immigrants performing essential work.

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## *Affordable Care Act (ACA)*

Under the ACA, in 2022, a health plan will be considered “affordable” if the employee's contribution for self-only coverage does not exceed 9.61% of the employee's household income. Under the BBBA, beginning in 2022, that threshold would decrease to 8.5%. This would increase the cost of employer contributions, and may have a significant impact on companies employing large numbers of low-wage earners.

## *National Labor Relations Act (NLRA)*

The BBBA would add two new provisions to the NLRA:

- [Heavy civil penalties](#) against employers engage in unfair labor practices (ULP's); and
- **Personal Liability** for company directors and officers who direct or commit certain ULP's.

BBBA would also ban the following actions:

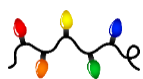
1. Permanent replacement of economic strikers;
2. Employer lockouts;
3. Incorrectly advising employees that they are “supervisors” or “independent contractors” and, thus, not covered by the NLRA;
4. Mandating employee attendance at employer pre-election campaign events; and
5. Entering or requiring employees to enter into agreements not to engage in collective actions such as class action litigation.

*GVRHA will keep you updated as the BBBA continues through the legislative process.*

## **U.S. Department of Labor Seeks Public Comment**

While the fight over vaccine mandates takes center stage, HR people know they need to keep an eye on all the balls. The following proposed regulations are open for comment at [Regulations.gov](#):

- [EBSA Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights NPRM](#) – The Notice of Proposed Rulemaking Rule was published on October 14, 2021 and the comment period ends **December 13, 2021**.
- [ETA Apprenticeship Programs, Labor Standards for Registration NPRM](#) – The Notice of Proposed Rulemaking was published on November 15, 2021 and the comment period ends **January 14, 2022**
- [OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard Interim Final Rule; extension of comment period](#) – The extension of comment period was published on December 3, 2021. The comment period is extended until **January 19, 2022**.
- [EBSA Prescription Drug and Health Care Spending. Interim Final Rules](#) – The Interim Final Rules was published on November 23, 2021 and the comment period ends **January 24, 2022**.
- [OSHA Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings; Extension of Comment Period](#) – The extension of comment period was published on December 3, 2021. The comment period is extended until **January 26, 2022**.
- [ETA Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States Notice of Proposed Rulemaking](#) – The Notice of Proposed Rulemaking was published on December 1, 2021 and the comment period ends **January 31, 2022**.



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