



Paid Sick Leave and Paid Family Medical Leave under the American Rescue Plan Act of 2021

April 2021

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (“ARPA”). This bill is the latest COVID-19 stimulus legislation and includes changes to the Families First Coronavirus Response Act (“FFCRA”).

As a reminder, the FFCRA provided employees paid sick leave and family medical leave for specified purposes that would then be offset by tax credits for employers with less than 500 workers. The mandate to provide the leave ended on December 31, 2020, but the Consolidated Appropriations Act, passed on December 27, 2020, gave employers that had been covered under the FFCRA and that **voluntarily** decided to provide the qualified paid sick leave or family leave the ability to still claim the tax credit for the paid leave until March 31, 2021.

The ARPA does not bring back the employer mandate to provide the paid sick leave or paid family and medical leave, but it does continue the tax credit through September 30, 2021 for employers who voluntarily provided the leave and who were subject to the FFCRA (those with less than 500 employees). Importantly, the ARPA also expands the reasons for qualifying leave and provides new allotments of paid time that can qualify for tax credits.

Q: Are employers now required to provide emergency paid sick leave or emergency family medical leave?

A: No. The requirement to provide the paid leave ended December 31, 2020.

Q: If a covered employer chooses to provide emergency paid sick leave or emergency family medical leave, can they still receive the tax credit?

A: Yes. Employers who were covered by the FFCRA (those with fewer than 500 employees) who voluntarily provide paid sick leave or paid family leave under the FFCRA are still eligible for the tax credit.

- During the period from January 1, 2021 through March 31, 2021 employers are only eligible for a tax credit for qualified leave as defined under the FFCRA.
- During the period from April 1, 2021 through September 30, 2021 employers are eligible for the credit based upon qualified leave as defined under the FFCRA and as expanded under the ARPA.

Q: What counts as qualified paid leave for a covered employer to receive a tax credit?

A: Please see below for information on which potential reasons for leave listed below count as qualified paid leave for specific time periods.

1. The employee is subject to a federal, state, or local quarantine or isolation order;
 2. The employee has been advised by a health care provider to self-quarantine;
 3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 4. The employee is caring for an individual to which points 1 or 2 apply;
 5. The employee is caring for a child if the child's school or place of care has been closed or the childcare provider is unavailable due to COVID-19 precautions;
 6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Labor and the Treasury;
 7. The employee is obtaining a COVID-19 immunization;
 8. The employee is recovering from an injury, disability, illness or condition related to COVID-19 immunization; or
 9. The employee is seeking or awaiting the results of a COVID-19 test or diagnosis because either the employee has been exposed to COVID-19 or the employer requested the test or diagnosis.
- **For leave between January 1 and March 31, 2021:** Qualified leave is defined under the FFCRA.
 - o *Qualified Sick Leave:* two weeks of paid leave due to circumstances 1 through 6 on the list above related to COVID-19
 - o *Qualified Family Medical Leave:* up to 12 weeks of paid leave only for the care of a child if the child's school or place of care has been closed, or the childcare provider is unavailable, due to COVID-19
 - > This only applies for those who have been employed for at least 30 days and who are unable to work (or telework) under these circumstances.
 - **For leave between April 1 and September 30, 2021:** The expanded leave under the ARPA applies. Qualified Sick Leave and Qualified Family Medical Leave can be taken for any of the nine reasons listed above.

Q: How much leave is eligible for the tax credit?

A: The answer will depend on the reason for leave and when it is taken.

- **Paid Sick Leave:** An employer can receive a tax credit for up to 10 days of paid sick leave for employees. This 10-day limit resets on April 1, 2021, even if the employer has previously taken the credit for paid leave for that employee prior to that date.
 - o For employees taking paid leave for reasons 1 through 3 above, or reasons 7 through 9 (but only after April 1, 2021):
 - > The employee's rate of pay for sick leave is based on an employee's regular rate of pay, or the minimum wage (if that is greater)
 - > Pay for such leave shall not exceed \$511 per day for a total of \$5,110
 - o For paid sick leave used by an employee for reasons 4 through 6 above:
 - > The amount of the tax credit an employer can receive is limited to 2/3 of the employee's regular rate of pay (or minimum wage if that is greater) up to \$200 a day for a \$2,000 maximum.

- **Paid Family Medical Leave:** An employer can receive a tax credit for up to 12 weeks of paid family medical leave. Like the paid sick leave, this time limit will be reset for employees on April 1, 2021. The total cap for paid sick leave is also being increased from \$10,000 per employee to \$12,000 per employee on April 1, 2021.
 - o The available credit is still 2/3 of an employee's regular rate of pay (or the minimum wage if that is greater) and cannot exceed \$200 per day.
 - > This \$200 per day limit applies for any of the nine reasons for leave listed above, even if it would be subject to the \$511 per day limit under the paid sick leave provisions.
 - > The ARPA did remove the requirement that the first 10 days of paid family medical leave be unpaid (or paid by the paid sick leave provisions). However, to maximize the tax credit an employer should consider whether it will provide some of the leave as paid sick leave to take advantage of the \$511 per day limit instead of the \$200 per day limit. This is a decision that each employer should make, but it should be made on a consistent basis for all employees in the same circumstances.

Q: Can an employer only provide paid sick leave or paid family medical leave to certain employees?

A: No. The ARPA includes a non-discrimination requirement so that the tax credits are available only to an employer that does not discriminate in favor of highly compensated employees, full-time employees, or employees on the basis of employment tenure.

Q: How does the employer get reimbursed for paid sick and paid family and medical leave?

A: The same process that was established with the FFCRA will apply to reimburse employers who choose to voluntarily provide the paid sick leave or paid family medical leave. A credit is allowed against payroll taxes for each calendar quarter in an amount equal to 100 percent of the qualified sick leave wages or qualified family medical leave wages paid by that employer with respect to that calendar quarter subject to the limits discussed above. However, the amount of the credit can be increased by the amount paid by the employer for health plan coverage of an employee while on the paid sick and/or family medical leave required by the bill. The credits apply only to employers with fewer than 500 employees.

To obtain the credit the employer simply retains the amount of the credit from payroll taxes instead of depositing it with the IRS. The payroll taxes available for retention include federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees. If the payroll taxes are not sufficient to cover the cost of the leave, the employer can request an accelerated payment from the IRS by filing a Form 7200 with the IRS, which can be found [here](#). These credits can only be taken for paid sick and paid family medical leave taken through September 30, 2021.