

Legislative Update

Changes to FFCRA Employee Leave

The American Rescue Plan Act of 2021 (ARPA), signed into law on March 11, 2021, included changes to emergency paid sick leave and paid family leave under the Families First Coronavirus Response Act (FFCRA).

American Rescue Plan Changes to FFCRA

- Extended tax credits through September 30, 2021, for employers that continue to provide FFCRA leave voluntarily (beyond the original December 31, 2020 expiration date)
- Made changes to tax credit eligibility for both types of FFCRA leave

Changes to Voluntary Emergency Paid Sick Leave

- Permits the FFCRA tax credit for a new bank (80 hours per employee) of emergency paid sick leave beginning April 1, 2021.
- COVID-19 testing and vaccination are now qualifying reasons for the voluntary leave and are now applicable to tax credit

Changes to Voluntary Paid Family Leave

- Extends the FFCRA family leave tax credit to apply to leave taken for:
 - FFCRA emergency paid sick leave reasons
 - reasons related to COVID-19 testing and vaccination
- Increases family leave wages eligible for the tax credit to \$12,000 (up from \$10,000) per employee.
- Removes the requirement that the first two weeks of family leave be unpaid.

ACTION STEPS

Employers wanting to provide FFCRA leave should become familiar with the ARPA changes to ensure eligibility for the tax credits provided by the law. In addition, employers should watch for expected official guidance on implementing the ARPA.

Highlights

FFCRA Leave Remains Voluntary

ARPA did not reinstate FFCRA leave mandates.

Tax Credit Extension

Employer tax credits extended through September 30, 2021, for wages, health plan expenses and Medicare tax for FFCRA leave provided voluntarily.

FFCRA Paid Leave

FFCRA employer tax credits apply to 80 new hours of paid sick leave per employee, 12 weeks of paid family leave, and adds new eligible reasons for leave.

IMPORTANT DATES:

April 1, 2021

ARPA changes to FFCRA leave take effect.

September 30, 2021

Tax credits for FFCRA leave expire.

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What is the FFCRA?

The FFCRA required employers with fewer than 500 employees to provide 80 hours of emergency paid sick leave and 12 weeks of expanded family leave (the first two weeks of which were unpaid) for specific COVID-19-related purposes. This leave mandate was in effect from April through December 2020.

The FFCRA also provided tax credits for employers to cover certain costs of the employee leave required by the law: employee wages, health plan expenses allocable to those wages, and the employer's portion of the Medicare tax related to the wages. FFCRA tax credits are taken against employment taxes and are advanceable and fully refundable. They are also available to people who are self-employed.

In December 2020, the Consolidated Appropriations Act, 2021, extended the tax credits for FFCRA leave employers provide voluntarily through March 31, 2021. The leave mandate itself was not extended.

The ARPA further extended the employer tax credits for FFCRA leave through Sept. 30, 2021, and made changes to both types of FFCRA leave. FFCRA leave remains voluntary, at the employer's option.

Important Note on Tax Credit Eligibility

For leave to be eligible for the employer tax credits under ARPA, the employer must comply with the emergency paid sick leave and expanded family leave requirements of the FFCRA, as if they continued to apply and as they are amended by the ARPA.

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Emergency Paid Sick Leave

Additional Reasons for Leave

Under the ARPA, paid sick leave is eligible for the employer tax credit if taken by an employee for any of the qualified reasons under the FFCRA while the mandate was in effect, and adds the following eligible reasons:

- Inability to work (or telework) while seeking or waiting results of a diagnostic test for, or medical diagnosis of, COVID-19 after exposure or employer request for test or diagnosis
- Inability to work (or telework) while obtaining COVID-19 immunization
- Inability to work (or telework) while recovering from any injury, disability, illness, or condition related to COVID-19 immunization.

New Bank of Leave Time

The ARPA permits the tax credit for a new bank of 80 hours of FFCRA paid sick leave per full-time employee, starting April 1, 2021. For part-time employees, the amount of new leave is the average time worked over two weeks.

Paid Family Leave

Additional Reasons for Leave

In addition to the 3 new reasons added to emergency paid sick leave above, the ARPA allows employers to take the family leave tax credit for leave that would have satisfied the FFCRA paid sick leave requirements. This expands the tax credit to cover expenses for employee leave taken when an employee is:

- Subject to a federal, state, or local quarantine or isolation order due to COVID-19
- Advised by a health care provider to self-quarantine due to COVID-19 concerns
- Caring for an individual in any of the two above-listed circumstances
- Experiencing symptoms of COVID-19 and are seeking a medical diagnosis

This ARPA change means the family leave credit can fund what was previously considered paid sick leave for up to 12 weeks, instead of the two weeks traditionally permitted for paid sick leave.

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Paid Family Leave (cont.)

Payment for 12 Weeks of Family Leave

Under the FFCRA leave mandate, employees on family leave were not compensated for the first two weeks of family leave, although the remaining 10 weeks of family leave were paid. The ARPA allows the employer tax credit to fund wages for the full 12 weeks of FFCRA family leave, up to a cap of \$12,000 (formerly \$10,000) per employee.

Nondiscrimination

In providing FFCRA leave, employers may not discriminate in favor of highly compensated employees, full-time employees or on the basis of employment tenure. Discrimination of this nature will make the leave ineligible for the tax credit for the calendar quarter in which the discrimination occurred.

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