

American Rescue Plan: Changes to FFCRA Employee Leave



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The [American Rescue Plan Act](#) (ARPA), enacted March 11, 2021, includes changes to emergency paid sick leave and paid family leave under the [Families First Coronavirus Response Act](#) (FFCRA). The ARPA extended the tax credits through Sept. 30, 2021, for employers that continue to provide FFCRA leave voluntarily (beyond the Dec. 31, 2020, expiration date) and made changes to tax credit eligibility for both types of FFCRA leave.

Voluntary Emergency Paid Sick Leave

The ARPA permits the FFCRA tax credit for a new bank of emergency paid sick leave, beginning April 1, 2021. The amount of the new leave is 80 hours per employee. The ARPA also added COVID-19 testing and vaccination as qualifying reasons for the voluntary leave, meaning tax credits may be taken for paid sick leave provided for these new reasons.

Voluntary Paid Family Leave

The ARPA expands the FFCRA family leave tax credit by allowing the credit to apply to:

- Family leave taken for FFCRA **emergency paid sick leave** reasons
- Family leave taken for reasons related to COVID-19 testing and vaccination

The ARPA also increases the family leave wages eligible for the tax credit to \$12,000 (up from \$10,000) per employee, and it strikes the FFCRA requirement that the first two weeks of family leave be unpaid.

Action Steps

Employers that want to provide FFCRA leave to their employees should become familiar with the ARPA changes to ensure eligibility for the tax credits provided by the law. Employers should also look for expected official guidance on implementing the ARPA.

Overview

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.

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.

Emergency Paid Sick Leave

Additional Reasons for Leave

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

1. An employee's inability to work or telework while they are seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19, when the employee has been exposed to COVID-19 or the employer has requested the test or diagnosis.
2. An employee's inability to work or telework while they are obtaining COVID-19 immunization; and
3. An employee's inability to work or telework while they are 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

The ARPA allows the family leave tax credit for leave taken for the same three new COVID-19 testing and immunization-related reasons added to emergency paid sick leave, detailed above.

In addition, under the ARPA, employers may take the **family leave** tax credit for leave that would have satisfied the FFCRA **paid sick leave** requirements. This expands the FFCRA family leave tax credit to cover expenses for employee leave taken not just for childcare purposes, but also for leave taken when employees can't work because they:

- Are subject to a federal, state or local quarantine or isolation order related to COVID-19;
- Have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- Are experiencing symptoms of COVID-19 and are seeking a medical diagnosis; or
- Are caring for an individual subject to a federal, state or local quarantine or isolation order related to COVID-19 or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

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 permitted for paid sick leave.

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 based on employment tenure. Discrimination of this nature will make the leave ineligible for the tax credit for the calendar quarter in which the discrimination occurred.