

Blog Post

# Paid Leave and Payroll Tax Credits Under the American Rescue Plan

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Employers wading through the \$1.9 trillion American Rescue Plan Act may be wondering how it impacts paid leave and payroll tax credits made available under the Families First Coronavirus Response Act (FFCRA), enacted back in March 2020. Here's the scoop:

## **Eligible Employers May Choose to Extend Paid Leave and Obtain Tax Credits Through September 30, 2021**

Under the FFCRA, employers with fewer than 500 employees were required to provide emergency paid sick leave and expanded family and medical leave from March 2020 to December 31, 2020 for specifically enumerated reasons related to COVID-19. Employers received payroll tax credits to offset the cost of leave under the FFCRA. When the mandated leave provisions expired, eligible employers were permitted to *voluntarily* choose to extend paid leave for employees through March 31, 2021 and obtain payroll tax credits to offset the cost of leave the voluntarily provided until March 31, 2021. The American Rescue Plan further extends the payroll tax credits until September 30, 2021 for eligible employers who voluntarily provide such paid leave. Eligible employers can choose to provide just the emergency paid sick leave, just the expanded family and medical leave, or both. The tax credits are

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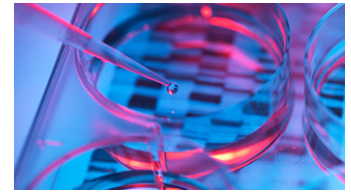
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available only to employers with fewer than 500 employees.



Additionally, the American Rescue Plan now permits state and local governments, as well as federal governmental instrumentalities that are tax-exempt 501(c)(3) organizations, to voluntarily provide paid leave and to receive payroll tax credits.

### **Changes to Pay and New Qualifying Reasons for Leave**

The American Rescue Plan expanded the qualifying reasons for leave under both the Emergency Paid Sick Leave (EPSL) and the Emergency Family and Medical Leave Expansion (EFMLA) provisions of the FFCRA. It also increases the amount of paid leave available under the EFMLA. Previously under the FFCRA, employers with fewer than 500 employees were required to provide paid sick leave of up to 80 hours for certain coronavirus-related reasons under the EPSL. The EFMLA, allowed eligible employees to take an additional 10 weeks of paid leave at two-thirds their regular wages, but only to care for a child whose school or place of care was closed or unavailable because of COVID-19.

The American Rescue Plan expands the qualifying reasons for leave available under the EPSL and the EFMLA, so that employees can receive some amount of paid leave for a total of up to *14 weeks*, depending on the reason for the leave.

Under the FFCRA, qualifying reasons for providing EPSL were limited to if the employee is unable to work (or telework) because the employee: (1) is subject to a federal, state, or local quarantine or isolation related to COVID-19; (2) has been advised by a healthcare provider to self-quarantine; (3) is experiencing COVID-19 symptoms and seeking a diagnosis; (4) is caring for an individual who is subject to quarantine or is self-quarantining; (5) is caring for a child whose school or place of care is closed (or child care provider is unavailable) because

of COVID-19 or (6) is experiencing any other substantially similar condition specified by the U.S. Secretary of Health and Human Services.

Under the American Rescue Plan employers can now receive tax credits for employees to take emergency paid sick leave for *three additional reasons*: (1) obtaining a COVID-19 immunization; (2) recovering from an injury, disability, illness, or condition related to the immunization or (3) seeking or awaiting the result of a COVID-19 test or diagnosis when the employee has either been exposed to COVID-19 or the employer has requested the test or diagnosis.

Under the American Rescue Plan, the emergency paid sick leave credit will cover up to 80 hours of paid leave up to \$511 per day (pro-rated for part time employees) for any of the foregoing nine reasons.

The qualifying reasons for EFMLA leave are also expanded under the American Rescue Plan. Previously, under the FFCRA, tax credits were available for providing emergency paid family and medical leave only if the employee was unable to work (or telework) to care for a child whose school or place of care was closed or unavailable because of the public health emergency. Under the American Rescue Plan, eligible employers can claim tax credits for providing family and medical leave for any of the original six qualifying reasons for paid sick leave under the FFCRA and the additional three reasons added under American Rescue Plan (see above).

The amount of pay for emergency family and medical leave also has changed. First, the American Rescue Plan removes the 10-day unpaid waiting period for taking EFMLA leave. Second, the tax credits will now cover up to an additional 12 weeks of paid leave under the EFMLA at two-thirds regular pay up to \$200 per day for any of the nine qualifying reasons listed above. Third, employers can receive tax credits for employees taking both EPSL and EFMLA leave, although not for the same 10-day

period, therefore increasing the total amount of paid leave to 14 weeks and increasing the cap on paid leave from \$10,000 to \$12,000.

Self-employed workers are also entitled to up to 60 days of paid leave under the American Rescue Plan.

### **Emergency Paid Sick Leave Amounts Reset April 1**

Under the American Rescue Plan, employees who previously exhausted their emergency paid sick leave under the FFCRA will now be entitled to up to 10 days of qualified emergency paid sick leave beginning April 1, 2021. However, this leave is not cumulative and an employee who did not previously exhaust emergency paid sick leave will lose whatever time was not previously used.

The American Rescue Plan does not reset the paid leave available under the EFMLA and therefore employees do not have an opportunity to use more than 12 weeks of EFMLA leave in any 12 month period. For example, an employee who used 1 week of EFMLA leave between April 1, 2020 and March 31, 2021 will still only have access to 11 remaining weeks of EFMLA leave on April 1, 2021, but the first week would be paid at 2/3 pay (up to \$200/day) and is available for the expanded qualifying reasons above.

### **Paid Leave Must Be Provided to All Current Employees**

Employers who voluntarily provide leave under the American Rescue Plan must follow the new anti-discrimination rule. This rule makes the tax credit available only to employers who provide leave to all employees without discriminating against certain categories of workers, including newly hired and part-time employees. Specifically, an employer does not qualify for the tax credit if the employer discriminates (1) in favor of highly compensated employees, (2) full-time employees, or (3) on the basis of the employment tenure of the employee.

## **No Effect on Existing State or Local Leave Laws**

The American Rescue Plan does not affect additional leave that might be available under state or local leave laws, such as those available in California, Colorado, New York, New Jersey, and Washington, D.C.

For guidance with respect to paid leave under the American Rescue Plan and other applicable laws, contact your Akerman lawyer.

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