



EXPANSION OF COVID-RELATED EMPLOYEE LEAVE
-AND-
REDUCTION OF FEDERAL MEDICARE PAYMENTS (TAX CREDIT)
FOR PROVIDING PAID LEAVE TO EMPLOYEES
UNDER THE AMERICAN RESCUE PLAN ACT OF 2021

American Rescue Plan Act of 2021 (“ARP”), signed into law on March 11, 2021, provides additional relief to employers in order to lessen the continued impact of COVID-19 on state and local governments, among others. The ARP builds upon previously enacted aid measures providing paid leave under The Families First Coronavirus Response Act (FFCRA) of 2020. **The ARP does not require employers to provide Emergency Paid Sick Leave or EFMLA leave to its employees. However, when offered to employees, thus allowing employers to receive the related tax credits, the leave must be made available to all employees who qualify.**

The ARP has made a few significant changes to how the FFCRA is implemented. The following are the highlighted takeaways from the ARP and are explained in more detail below:

- The ARP extends authority of employer to offer COVID-related FFCRA leave to employees through September 30, 2021.
- COVID related leave has been expanded to include additional eligible reasons, including leave associated with receiving a COVID-19 vaccine.
- Employers who offered and/or continue to offer COVID related leave to employees may reduce their Federal Medicare payments through a tax credit in order to cover the costs of the leave.
- When Medicare payments/withholdings are insufficient to cover the cost of the FFCRA leave benefits, employers may apply for credit from the IRS to cover the cost of the paid leave.

EXTENSION OF COVID-RELATED FFCRA LEAVE

Employer obligations to provide paid sick and family leave under the FFCRA ended on December 31, 2020. However, employers who elected to voluntarily provide FFCRA-type leave were granted an extension of payroll tax credits through March 31, 2021. Currently, the ARP has again extended the availability of payroll tax credits through September 30, 2021. As the obligation to provide the leave has ended, this leave is still optional, similar to the expansion previously implemented on January 1, 2021.

EXPANSION OF COVID RELATED LEAVE

The ARP broadens the COVID-19 related sick leave reasons for which an employee would qualify for paid leave, and thus for which an employee can obtain a related payroll tax credit.

- The employee is obtaining the COVID-19 vaccine
- The employee is recovering from an illness, injury or condition related to the COVID-19 vaccine
- The employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 if the employee has been exposed, or the employee's employer has requested such test or diagnosis
- The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19
- The employee has been advised by a health care provider to self-quarantine due to COVID-19
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis
- The employee is caring for an individual who is subject to a quarantine or isolation order due to COVID-19
- The employee is caring for his or her son or daughter if the child's school or place of care has been closed or is unavailable due to COVID-19
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor

In short, the prior list has been expanded to include (1) obtaining a vaccine, (2) recovering from receipt of the vaccine, and (3) seeking or awaiting the results of a diagnosis or test. In addition, under the ARP an employee may use FMLA leave for any of the above reasons, instead of being limited only to care for a child whose school, daycare or child care is unavailable due to COVID-19 (as was previously the case under the FFCRA).

REDUCTION OF FEDERAL MEDICARE PAYMENTS (TAX CREDIT)

Essentially, this means the Board can receive a tax credit for providing paid time off for each employee to receive the COVID-19 vaccination or for paid leave taken to recover from any illness or condition resulting from receipt of the vaccination. The employer obtains a tax credit which is equal to the wages paid to the employee. This tax credit is available to eligible employers that pay sick and family leave from April 1, 2021 through September 30, 2021.

More specifically, as of April 1, 2021, employers are able to claim tax credits for up to ten days (80 hours) of Emergency Paid Sick Leave taken by an employee. These tax credits are new credits in addition to the credits for ten days of Paid Sick Leave that were originally provided for under the FFCRA. Under the ARP, an employer who claimed tax credits for

employees who exhausted their ten days of Paid Sick Leave before April 1, 2021 can now allow for those same employees to take an additional ten days and, thus be eligible to receive an additional ten days' worth of tax credits.

A major change for Emergency Family and Medical Leave (EFML) is the elimination of the requirement that the first two weeks be unpaid. Accordingly, now if an employee qualifies for Family and Medical Leave, they are eligible for a full 12 weeks of paid leave (only if they have not previously used any EFML or other leave under the Family Medical Leave Act (FMLA)). Consequently, the tax credit now available for that leave has increased from \$10,000 to \$12,000 in the aggregate. In addition, as also explained above, the reasons for which an employee may use EFMLA has increased.

The ARP does not require employers to provide Emergency Paid Sick Leave or EFMLA leave to its employees. However, when offered to employees, thus allowing employers to receive the related tax credits, the leave must be made available to all employees who qualify. Employees' eligibility for leave cannot be limited for any reason, such as being based on seniority, pay level, or full-time status. Likewise, employers cannot prevent employees from taking the maximum allowable leave or restricting usage of the leave to specific times. Failure of employers to comply with any requirement of the EFMLA or the Emergency Paid Sick Leave disqualifies the employer from obtaining tax credits for paid leave. It is also important to note, that with the expansion of eligibility for time off under the EFMLA along with the additional ten days of Emergency Paid Sick Leave, this means that an employee could potentially take up to a total of 14 weeks of paid FFCRA leave.

CLAIMING THE TAX CREDITS

The credits are applied against the Board's share of the Medicare tax. The tax credits are refundable, meaning if the credit exceeds the Board's share of the Medicare tax then the Board is entitled to payment of the full amount.

The tax credit for paid sick leave wages paid for COVID-19 related reasons for up to two weeks (80) hours is limited to \$511 per day and a total of \$5,110, at 100% of the employee's regular rate of pay. The tax credit for paid family leave wages is equal to the wages paid for up to 12 weeks, limited to \$200 per day and \$12,000 in the aggregate, at 2/3 of the employee's regular rate of pay.

Employers claim the total leave paid to employees for each quarter on their federal employment tax return, most often Form 941. The IRS has explained that in anticipation of claiming the credits, eligible employers can keep the federal employment taxes that they would have deposited, with respect to all employees up to the amount of credit for which they are eligible. The amounts retained by the employer may include federal income tax withheld from employees, the employees' share of social security and Medicare taxes and the employer's share of social security and Medicare taxes.

APPLICATION FOR CREDIT FROM THE IRS TO COVER COST OF LEAVE

Eligible employers who do not have sufficient funds set aside for deposit to cover the total amounts paid as COVID-19 related sick and family leave wages may request an advance of the credits by filing Form 7200. The employer will then account for the amounts received as an advance when it files its Form 941.

Employers are encouraged to consult with their tax attorney or other tax professional for further information or limitations on eligibility, reporting and/or claiming the tax credits.

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