

## **American Rescue Plan Act: Expanded Payroll Tax Credits and Local Government Eligibility**

The American Rescue Plan Act (ARPA) expanded and extended the tax credit for qualified sick leave and family leave wages originally introduced in the Families First Coronavirus Response Act (FFCRA). It also lifted the exclusion of state and local governments from tax credits.

The new tax credits are available through September 30, 2021. They are not retroactive for state and local governments—and are effective only for payments made after March 31, 2021. Since January 1, 2020, the leave provisions have been optional rather than mandatory, and if public employers choose to provide expanded paid sick or family leave, they can now receive these tax credits for wages paid after March 31, 2021.

With respect to the expanded paid sick and family leave, the law also requires employers not discriminate in favor of highly-compensated employees, full-time employees, or based on employee tenure.

For this “extended” FFCRA, which is purely optional, many of the provisions are identical to the FFCRA effective April 1, 2020. There are some differences:

1. For paid family leave, the credit is capped at \$200 per employee per day, up to a maximum of \$12,000.
2. For paid sick leave:
  - a. For health, diagnosis, or vaccination, the credit is 100% of the employee’s rate of pay (or minimum wage, whichever is higher), up to \$511 per day for up to 10 days.
  - b. For caregiving needs, the credit is 67% of the regular rate of pay (or minimum wage, whichever is higher), up to \$200 per day for up to 10 days.

To qualify for the credit, employees must satisfy one of several qualifying reasons for their leave:

1. Subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Has been advised by a health care provider to self-quarantine related to COVID-19;
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. Is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. Is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19;
6. Is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services;
7. The employee is seeking or awaiting the results of a diagnostic test, or medical diagnosis of, COVID-19 and has been exposed to COVID-19 or the employer has requested such test or diagnosis; or
8. The employee is obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to such immunization.



Employers can also get a credit for certain costs to maintain health insurance coverage for the employee during that period, as well as certain amounts paid under collective bargaining agreements.

The tax credits cover:

- Up to 80 Hours of qualifying leave for full-time employees and a pro-rated amount for part-time employees.
- Up to 12 weeks of qualifying paid family leave.

Employers can receive credits for employees taking leave under both credits, though not at the same time; therefore, in total, employers can receive credits to cover up to 14 weeks of leave per employee.

The paid leave tax credits are taken against the 1.45% employer share of Medicare tax. The paid leave tax credits are refundable. This means that if employers qualify for more in credits than they would owe in covered taxes, they can get back the additional money through a refund from the IRS.

The IRS has not yet updated guidance for the expanded ARPA credit, but previous guidance under the FFCRA credit indicated that employers could claim the credit on their federal tax return, reduce employment tax deposits, or request an advance payment of credits.

#### **How does the employer claim the credits?**

The best guide is the updated version of IRS Form 941. As of March 2021, Form 941 provides a specific worksheet for calculating the credit. See [Instructions for Form 941 \(Rev. March 2021\) \(irs.gov\)](#) (Worksheet 1 on p. 20). The step-by-step process is identified in the form and accompanying worksheet.

Employers can also receive *advance* payment for the sick and family leave credits if they have not paid sufficient federal employment taxes to cover the amount of the credits. To receive the advance payment, employers submit Form 7200. [Form 7200 \(Rev. January 2021\) \(irs.gov\)](#).

*If you have questions about the expanded payroll tax benefits, please call the AMLJIA's **Employment Law Hotline** at **1-877-4AMLJIA** (1-877-426-5542).*

