

The American Rescue Plan: Update for Employers Providing FFCRA Leave in 2021

Alert

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As discussed in "[New Coronavirus Relief Legislation Impacts Employers in Two Key Areas](#)" the Families First Coronavirus Response Act (FFCRA) paid leave mandates expired January 1, 2021 and there is presently no requirement under federal law for employers to provide paid leave for COVID-19 related reasons. But if an employer chooses to continue to provide such paid leave, it can still take the associated tax credits for a period of time. Under the American Rescue Plan of 2021 signed by President Biden yesterday, there is still no requirement to provide paid leave. However, if an employer continues to voluntarily provide paid FFCRA leave in 2021, the following new provisions apply:

- **Tax Credit for Providing FFCRA Leave Extended:** The new law extends tax credits available to employers who voluntarily provide FFCRA in 2021 from March 31, 2021 to September 30, 2021.
- **Additional Leave as of April 1, 2021:** The new law "refreshes" paid leave tax credit eligibility as of April 1, 2021 for providing FFCRA leave. As a result, an employer can voluntarily provide an additional 80 hours/10 days of paid sick leave, and an additional 12 weeks of paid family leave under the FFCRA beginning April 1, 2021, and are eligible for a tax credit for doing so. Again, providing this additional leave is not a requirement. The act increases the limit on the credit for paid family leave to \$12,000.
- **New Categories of Paid Leave:** Tax credits are now available for providing paid leave for the reasons in the FFCRA plus the following new qualifying reasons, including absences related to receiving a COVID-19 vaccine:
 - The employee is seeking or awaiting the results of a diagnostic test or medical diagnosis for COVID-19, or their employer has requested such a test or diagnosis.
 - The employee is obtaining immunization related to COVID-19.

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- The employee is recovering from any injury, disability, illness or condition related to such immunization.
- **New Non-Discrimination Rules:** The new law also adds non-discrimination rules to provide that no tax credit is available if the employer, in providing paid leave to its employees, discriminates in favor of highly compensated employees, full-time employees, or employees on the basis of tenure with the employer. If employers do not make FFCRA paid leave available to all employees without respect to their job category or seniority, they could be denied the tax credit.
- **Federal Employees:** Federal workers are now eligible for up to 15 weeks of paid leave for COVID-19-related absences for themselves and their families.

The additional tax credit benefits can complement employers' existing leave policies. Moreover, employers who are voluntarily providing paid leave for COVID-19 reasons can utilize the expanded eligibility categories to reinforce their vaccine incentive programs for employees. As we have seen throughout the pandemic, complying with the regulatory requirements of the pandemic relief laws can be complicated.

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