



AFSCME Facts

Federal COVID-19-Related Paid Leave Tax Credits In the American Rescue Plan April 27, 2021

The American Rescue Plan Act of 2021, signed into law by President Biden on March 11, 2021, modifies and extends the emergency paid sick leave and paid family leave tax credits that were first passed under the Families First Coronavirus Response Act (FFCRA) early in 2020 and last extended in the end-of-year Consolidated Appropriations Act (CAA). This fact sheet provides an overview of the changes made by this new law.

Does the American Rescue Plan require private or state and local government employers to provide COVID-19-related leave?

No. A requirement that private employers with fewer than 500 employees and certain public employers provide employees COVID-19-related leave expired on Dec. 31, 2020, and Congress has not renewed it.

Does the American Rescue Plan give employers financial incentives to provide paid leave voluntarily?

Yes. Private employers with fewer than 500 employees, state and local government employers, and 501(c)(1) tax exempt federal government entities are eligible for federal tax credits that generally pay for the costs of certain kinds of leave taken from April 1 through Sept. 30, 2021. **This is the first time that Congress has made state and local government employers eligible for COVID-19 paid leave tax credits.** Under the prior coronavirus relief laws, only private employers with fewer than 500 employees were eligible for tax credits.

What kinds of leave qualify for the paid leave tax credits and how much can be claimed?

Under the American Rescue Plan, eligible employers generally can claim the paid leave tax credits for the same kinds of leave and in the same amounts covered by the FFCRA and CAA, with some important improvements. The two types of leave taken for specified reasons related to COVID-19 and the costs that can be claimed during the second and third quarters of 2021 include:

- Two weeks of emergency paid sick leave (EPSL) that is fully paid (capped at \$511 per day and \$5,110 total) to care for oneself or paid at two-thirds of the employee's regular rate of pay (capped at \$200 per day and \$2,000 total) to care for others.
- Up to 12 weeks of expanded family and medical leave (EFMLA) paid at two-thirds of the employee's regular rate of pay (capped at \$200 per day and \$12,000 total).

What changes were made to the kinds of leave and amounts covered by the federal tax credits?

Several improvements were made. The new law restarts the clock on the 10-day per employee limitation for EPSL, providing employees with a new 10-day period beginning April 1, 2021.

In addition, the American Rescue Plan expanded the qualifying reasons to take both the EPSL and EFMLA and claim tax credits. New reasons added to the original qualifying reasons for taking the EPSL include:

- Employees seeking or awaiting the results of a COVID-19 test or diagnosis because either the employee has been exposed to the virus or the employer requested the test or diagnosis.
- Obtaining a COVID-19 vaccine or recovering from its side effects.

The EFMLA, originally only available if employees were unable to work or telework due to COVID-19-related unavailability of a child's school or childcare, was expanded to match all of the purposes for EPSL. Therefore, EFMLA now includes leave taken for personal health and family caregiving. Also, the American Rescue Plan removes the FFCRA requirement that the first two weeks of EFMLA be unpaid. To pay for these two weeks, the new law increases the limit on the tax credit an employer can claim in a year from \$10,000 to \$12,000 per employee.

Were there any changes to the value of the tax credit?

Yes. The amount of compensation for which an employer can claim the tax credit is increased to include an employer's share of contributions to collectively bargained defined benefit pension plans and registered apprenticeship programs that are allocable to employee paid sick and family leave.

How are the tax credits claimed?

The paid leave tax credits are structured as a refundable tax credit against the Medicare Part A payroll tax. Employers can reduce their federal employment tax deposits in anticipation of the credit. They can also request an advance of these tax credits for any amounts not covered by the reduction in deposits. More information on how eligible employers may claim the tax credits can be found in this [IRS factsheet](#).

Were any discrimination protections included in the new law?

Yes. It includes a new nondiscrimination rule preventing employers from claiming the credits if they make leave available in a manner that discriminates in favor of highly compensated employees, full-time employees or based on tenure with the employer.

Where can I find additional information about the FFCRA leave?

- Our previous fact sheet dated March 29, 2020, “[New Leave Requirements Mandated by Congress for COVID-19](#),” provides more details concerning the kinds of FFCRA leave, qualifying reasons for taking leave and who is eligible for the leave.
- Our previous fact sheet dated Jan. 19, 2021, “[Federal COVID-19-Related Leave Requirements](#),” provides details concerning the updates made to FFCRA leave by the CAA.
- DOL maintains a [FFCRA Questions and Answers](#) page that provides workers and employers with guidance concerning the rights and responsibilities under the law. As of March 23, 2021, DOL had not added any questions and answers addressing the ARPA.
- The Internal Revenue Service (IRS) provides information and resources concerning the [sick and family leave federal tax credits](#) that can be claimed by employers.
- Department of Treasury [flyer](#) gives a quick look at the employer paid leave tax credits offered to eligible employers under the American Rescue Plan.