

Paid Family and Medical Leave and Paid Sick Leave Provisions in the American Rescue Plan Act

Introduction

The COVID-19 pandemic continues to have devastating implications on workers earning low wages and their families. The United States is now a full year into the pandemic, and parents are still struggling to work, maintain their families' economic security, and care for children who would normally be in child care or attending school.¹ Infections and illness from the virus continue as well. Economic and caregiving burdens are acutely felt by women—particularly Black, Latinx, and American Indian and Alaska Native women—families with low incomes, and workers with unpredictable schedules.² Workers paid low wages are the least likely to have access to any paid leave.³

Recognizing that the pandemic was exacerbating the country's caregiving crisis, Congress passed the **Families First Coronavirus Response Act (FFCRA) in March 2020, providing some private sector employees up to 10 paid sick days and up to 12 weeks of paid family and medical leave.**⁴ This was an important step toward providing workers earning low wages with access to paid leave during the pandemic. The leave was fully paid for by the federal government through tax credits to employers.

The FFCRA provisions were temporary and set to expire on December 31, 2020. In December, Congress passed the Consolidated Appropriations Act 2021, which extended the tax credit through March 31, 2021, for those employers choosing to provide the leave. Unfortunately, Congress did not extend the requirement that employers provide paid leave, effectively creating a voluntary program where employers that choose to provide paid leave can be reimbursed through the tax credits.

On March 11, 2021, President Biden signed the **American Rescue Plan (ARP)**. While it **does not reinstate the requirement that employers provide paid leave, it does extend and expand the tax credits to employers who choose to provide paid leave.** The tax credits will cover the cost of certain **COVID-19 related leave taken from April 1, 2021 through September 30, 2021, effectively "resetting the clock" on the emergency leave.**

Overview of Credits for Emergency Paid Sick and Family Leave

Emergency Paid Sick Leave Credit

Employers can claim tax credits to cover their costs for:

- **Up to 10 days of paid emergency sick leave for full-time employees** from April 1, 2021 until September 30, 2021.
- **Prorated paid emergency sick leave for part-time employees**, with the number of hours determined by their average hours worked in a two-week period.

- **Full wage replacement for employee self-care**, with a maximum required benefit of \$511 a day (\$5,110 total).
- **Two-thirds wage replacement if employees are caring for another individual or a child** whose school has closed or whose child care provider is unavailable, with a maximum reimbursement of \$200 a day (\$2,000 total).

Emergency Paid Family and Medical Leave Credit

Employers can claim tax credits to cover their costs for:

- Up to **12 weeks of paid emergency leave** from April 1, 2021 until September 30, 2021.
- Two-thirds wage replacement **for the leave period**, with a maximum reimbursement of \$200 a day (\$12,000 total).

Credit Uses

The ARP expanded and aligned the uses of paid sick time and paid family and medical leave to include the following reasons for both credits:

- Employee is subject to a government-mandated quarantine or isolation order related to COVID-19;
- Employee's health provider orders self-isolation due to concerns related to COVID-19;
- Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- Employee is seeking or waiting for the results of a COVID-19 test or diagnosis due to exposure or at their employer's request;
- Employee is obtaining a COVID-19 vaccination or recovering from related side effects;
- Employee is caring for an individual subject to a quarantine/isolation order by the government or a health care provider; or
- Employee is caring for a child whose school or place of care is closed, or whose child care provider is unavailable because of COVID-19.

Credit Allowances

- Employers can receive credits for employees taking both emergency paid sick leave and emergency paid family and medical leave, although not at the same time. Therefore, the credits can cover up to 14 weeks of paid leave per employee, and employers can claim up to \$12,000 in wages per employee.
- Employers who provide health insurance coverage can also claim credits to continue providing health coverage during the leave period.
- Employers will be reimbursed through a refundable tax credit that counts against their payroll tax. Credits can be advanced.

Credit Eligibility and Availability

- Paid leave tax credits under this Act are available to private sector employers with **less than 500 employees; self-employed workers; and state and local governments.**
- Employers can begin claiming the paid leave credits **starting April 1, 2021 through September 30, 2021.**
- The **clock resets on April 1, 2021**, so that an employee who took leave in the past year can take leave again. Leave under this Act cannot be carried over past September 30, 2021.
- Many federal government employees are also guaranteed up to 600 hours of emergency paid leave through this Act.

Worker Protections

- All eligible employees are entitled to emergency paid leave, regardless of their immigration status.
- Employers are prohibited from claiming tax credits if they make leave available in a manner that discriminates in favor of highly compensated employees, full-time employees, or based on employment tenure.

The Urgent Need for Permanent and Comprehensive Paid Leave

All workers need comprehensive paid sick days and paid family and medical leave regardless of where they live or who their employer is during a public health emergency and at all times. Paid leave is essential to protect the health of workers, their families, and our communities. Voluntary tax credits for employers who choose to provide leave does not provide meaningful access to paid leave for all workers.

As our country seeks to end the coronavirus pandemic and pursue a full economic recovery, paid leave is essential. Permanent paid sick days and paid family and medical leave programs can reduce the spread of illness, keep workers employed, and prevent economic instability that can otherwise result from experiencing an illness or caregiving need. Workers in jobs paying low wages—including those who have been on the frontlines of this pandemic in essential jobs—are the least likely to have paid sick day or paid family and medical leave. These workers are disproportionately women of color who have been hit the hardest by the health and economic crisis. **Now more than ever, our country needs permanent, inclusive, and comprehensive paid leave for all workers.**

Endnotes

¹ UOregon CTN in RAPID-EC Project, *Something's Gotta Give*, Medium, September 2020, <https://medium.com/rapid-ecproject/somethings-gotta-give-6766c5a88d18>.

² Misty L. Heggeness & Jason M. Fields, *Working Moms Bear Brunt of Home Schooling While Working During COVID-19*, U.S. Census Bureau, 2020, <https://www.census.gov/library/stories/2020/08/parents-juggle-work-and-child-care-during-pandemic.html>;

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³ “Table 31: Leave Benefits: Access, private industry workers, March 2020,” U.S. Bureau of Labor Statistics, National Compensation Survey: Employee Benefits in the United States – March 2020,

<https://www.bls.gov/ncs/ebs/benefits/2020/employee-benefits-in-the-united-states-march-2020.pdf>.

⁴ *Paid Sick Days and Paid Leave Provisions in FFCRA and CARES Act*, Center for Law and Social Policy, May 2020,

<https://www.clasp.org/publications/fact-sheet/paid-sick-days-and-paid-leave-provisions-ffcra-and-cares-act>.