

What Workers Need to Know About COVID-19 Emergency Leave Provisions under the American Rescue Plan

On March 18, 2020, Congress passed the Families First Coronavirus Act (FFCRA), which provided workers up to 10 paid sick days and up to 12 weeks of family leave (10 weeks paid).¹ The bill provided millions of private sector workers paid leave amid the ongoing COVID-19 pandemic; however, **the right to paid leave was only temporary and ended on December 31, 2020.**

In addition to the FFCRA paid leave provisions, states and local jurisdictions responded to COVID-19 by swiftly passing new laws or amending their existing paid sick leave laws to provide supplemental support to workers in their districts.² While the right to emergency paid leave under FFCRA expired, the American Rescue Plan (ARP) signed into law March 11, 2021, expanded the use of FFCRA **emergency paid leave credits for employers.**³ These payroll tax credits will reimburse employers for **voluntarily** offering emergency paid sick leave and emergency family and medical leave from April 1, 2021, through September 30, 2021.

The ARP's tax credits for emergency paid sick leave and emergency paid family and medical leave of up to two-thirds wage replacement under certain parameters are available to private sector employers with **fewer than 500 employees; self-employed workers; and state and local governments.**⁴ Under the ARP, employers can claim tax credits for paid sick days or paid family and medical leave for the following reasons:

- An employee who is subject to a government-mandated quarantine or isolation order related to COVID-19;
- An employee is caring for an individual subject to a quarantine/isolation order by the government or a health care provider;
- An employee who is caring for a child whose school or place of care is closed, or whose child care provider is unavailable because of COVID-19;
- An employee's health provider orders self-isolation due to concerns related to COVID-19;
- An employee who is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- An employee who is obtaining a COVID-19 vaccination;
- An employee who is suffering or recovering from side effects related to the COVID-19 vaccination; or
- An employee who is seeking or waiting for the results of a COVID-19 test if the employee has either been exposed to COVID-19 or the employer has requested the COVID-19 test.

The ARP clarifies that employers seeking reimbursement for leave cannot discriminate in granting paid sick

leave or emergency FMLA to a certain class of employee.

- All eligible employees are entitled to emergency paid leave, regardless of their immigration status.
- Part-time employees are eligible for the emergency paid sick leave; with the number of hours they receive determined by their average hours worked in a two-week period.

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.

What Can Workers Do?

Encourage employers to utilize these credits so that workers can access the emergency leave they most desperately need.

Although the emergency paid leave benefits under the ARP are not guaranteed, workers should encourage their employers to utilize these tax credits so workers can receive the leave they need. Three key takeaways that employers need to know when claiming the tax credits under the ARP for emergency leave include:

- The paid leave tax credits are taken against the Medicare Hospital Insurance tax, which employers generally pay on their employees' wages;
- The paid leave tax credits are refundable. 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; and
- The paid leave tax credits are advanceable. By following IRS procedures, employers will be able to get the money back early before they would file and pay their taxes.

More broadly, employers benefit from providing paid leave because it helps them attract new talent, increase employee retention after workers return from leave, and create a productive workplace with positive morale.⁵

Advocate for state and national paid leave policies.

The need for comprehensive, inclusive, and permanent paid leave policies has never been more timely or crucial. The COVID-19 crisis has propelled many workers into uncertainty as they struggle to access leave for themselves or their families.

Here's how you can seize this moment to improve paid leave policies in your communities:

- Let your elected leaders know that all workers need comprehensive, permanent, job-protected leave.
- Tell your members of Congress to pass permanent paid family and medical leave in the next jobs and infrastructure package.
- Go to paidleaveforall.org to take action today.

For more detailed information about the American Rescue Plan Act and the emergency paid leave credits, please refer to our fact sheet [here](#).

Endnotes

¹Job Quality Team, *Paid Sick Days and Paid Leave Provisions in FCRA and CARES Act*, May 2020, Center for Law and Social Policy, <https://www.clasp.org/publications/fact-sheet/paid-sick-days-and-paid-leave-provisions-ffcra-and-cares-act>.

²Emma Williamson and Adewale Maye, *Amended and New State and Local Laws and Guidance on Paid Sick Days in Response to COVID-19*, December 2020, Center for Law and Social Policy, <https://www.clasp.org/publications/fact-sheet/amended-and-new-state-and-local-laws-and-guidance-paid-sick-days-response>.

³Sapna Mehta, Paid Family and Medical Leave and Paid Sick Leave Provisions in the American Rescue Plan Act, March 2021, Center for Law and Social Policy, <https://www.clasp.org/publications/fact-sheet/paid-family-and-medical-leave-and-paid-sick-leave-provisions-american-rescue>.

⁴ The emergency family and medical leave credit offers two-thirds wage replacement for the leave period, with a maximum reimbursement of \$200 a day (\$12,000 total). The emergency paid sick leave credit offers 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).

⁵ Trish Stroman, Wendy Woods, Gabrielle Fitzgerald, Shalini Unnikrishnan, and Liz Bird, *Why Paid Family Leave is Good Business*, Boston Consulting Group, 2017, <https://www.bcg.com/en-us/publications/2017/human-resources-people-organization-why-paid-family-leave-is-good-business>.