

Emergency Paid Sick Leave and Emergency Paid Family Leave Under the American Rescue Plan Act of 2021 *Provisions as of August 6, 2021*

Beginning April 1, 2021, and through September 30, 2021, employers with fewer than 500 employees and certain governmental employers without regard to the number of employees can voluntarily choose to offer **emergency paid sick leave** and/or **emergency paid family leave** in exchange for a tax credit for qualifying wages IF they follow all of the provisions in the Emergency Paid Sick Leave Act (EPSLA), the Emergency Family and Medical Leave Expansion Act (EFMLEA), and the American Rescue Plan Act of 2021 (ARPA).

Employers that **voluntarily choose** to offer one or both of these paid leaves in exchange for receiving a tax credit for qualifying wages must follow these provisions.¹

1. Covered employers can choose to provide emergency paid sick leave **and/or** emergency paid family leave. They do not have to offer both leaves. (*Note: Given the limited amount of time remaining until the tax credits expire and because employees can take paid sick leave for the same reasons as paid family leave, most employers who have not already voluntarily elected to offer paid family leave will likely not do so at this time.*)
2. If an employer elects to offer one or both leaves, all employees, regardless of their status (full-time, part-time, seasonal, hourly, salaried, etc.), must be offered the leaves. Employers must permit employees to take emergency paid sick leave upon hire and emergency paid family leave after 30 days of employment.
3. If an employer elects to offer emergency paid sick leave, employees must receive a new allotment of 10 days (80 hours) of this leave for use through September 30, 2021. This reset amount of leave is available to employees even if they used 80 hours previously at any time from April 1, 2020, to March 31, 2021. Any unused sick leave prior to April 1, 2021, is forfeited.
4. If an employer elects to offer emergency paid family leave, employees do not receive a new allotment of time. It remains capped at 12 weeks for the period of April 1, 2020, through September 30, 2021.
5. The first two of the 12 weeks of paid family leave are no longer unpaid. Pay for this leave starts on day one for an employee who has been employed at least 30 days and has a qualifying event.
6. Emergency paid sick leave and emergency paid family leave are separate; using any amount of time under one of the leaves **does not reduce the amount of time under the other**. This means that it is possible for an employee to take up to **14 weeks** of paid leave if you elect to extend both leaves and the employee did not previously use any emergency paid family leave.
7. Both emergency paid sick leave and emergency paid family leave must be made available for all of the reasons under the EPSLA and EFMLEA, **plus several new reasons under the ARPA**. These include:

Reason 1: The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19. (The quarantine or isolation order is specific to the employee OR the employee is a member of a group of citizens for whom this order specifically applies.)

Reason 2: The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.

Reason 3: One of the following applies:

¹ The provisions outlined are not all-inclusive. Employers should refer to applicable resources from the Internal Revenue Service and Department of Labor for more information about leave requirements and tax credits.



- The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- The employee has been exposed to COVID-19 and is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19.
- The employee has been requested by the employer to obtain a diagnostic test for, or medical diagnosis of, COVID-19.
- The employee is obtaining an immunization related to COVID-19.
- The employee is recovering from an injury, disability, illness, or condition related to immunization.

Reason 4: The employee is caring for an individual who is subject to a quarantine or isolation order as described under Reason 1 or who has been directed or advised by a healthcare provider to self-quarantine described under Reason 2.

Reason 5: The employee is needed to care for his or her son or daughter whose school or place of care has closed or whose child care provider is unavailable due to COVID-19 precautions.

Reason 6: The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services (HHS) in consultation with the Secretary of the Treasury and the Secretary of Labor. **As of July 29, 2021, this now includes:**

- To accompany an individual² to obtain immunization related to COVID-19.
 - To care for an individual who is recovering from any injury, disability, illness, or condition related to the immunization.
8. An eligible employer may claim a tax credit for qualified **sick leave wages** for an employee who is unable to work due to any of the circumstances under Reasons 1, 2, and 3, at 100% of the employee's regular pay, up to \$511 per day and \$5,110 in the aggregate. For Reasons 4, 5, and 6, the tax credit is available at two-thirds the employee's regular pay, up to \$200 per day and \$2,000 in the aggregate.
 9. An eligible employer may claim a tax credit for qualified **family leave wages** for an employee who is unable to work due to any of the circumstances in Reasons 1-6, at two-thirds the employee's regular pay, up to \$200 per day and \$12,000 in the aggregate for qualified family leave wages.
 10. Employers are limited in their ability to substantiate the need for emergency paid sick or family leave beyond what is permissible under U.S. Department of Labor and Internal Revenue Service implementing regulations. If you are a client of our firm using our HR consultation service, you can request copies of our **Emergency Sick Leave Request Form** and **Emergency Family Leave Request Form**. These forms include the only information that employers can request from employees to certify their need for the paid leaves. The limitations make it easy for employees to take advantage of paid leave time. For this reason, some employers may choose not to offer the paid leaves.
 11. Under the ARPA, tax credits for emergency paid sick and family leave are increased by the employer's cost of maintaining health insurance coverage allocable to the qualified leave wages and certain amounts paid under collectively bargained agreements by the employer that are properly allocable to the qualified leave wages. The tax credits are also increased by the employer's share of Social Security and Medicare taxes imposed on the qualified leave wages.
 12. Tax credits for emergency paid sick and family leave will not be allowed by any employer who, with respect to providing these paid leaves, discriminates on the basis of employment tenure or in favor of highly compensated employees or full-time employees.

² For the purpose of qualifying reasons for emergency paid sick or family leave, an "individual" means an employee's immediate family member, a person who regularly resides in the employee's home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person. For this purpose, "individual" does not include persons with whom the employee has no personal relationship.