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# American Rescue Plan Expands Voluntary FFCRA Paid Leave Benefits for Eligible Employers

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The American Rescue Plan Act of 2021, H.R. 1319, which was signed into law last month, extends the amount of time that employers can utilize the Families First Coronavirus Response Act ("FFCRA") tax credit, to voluntarily provide paid time off to employees for COVID-19 related reasons.

Originally passed in March 2020, the FFCRA required employers with fewer than 500 employees to provide emergency paid sick leave and paid Family and Medical Leave Act ("FMLA") to employees for a variety of reasons related to the ongoing COVID-19 pandemic. As part of that law, employers would be entitled to claim tax credits against their quarterly payroll taxes "in an amount equal to 100 percent of qualified sick leave wages" and "qualified family leave wages."

The mandatory provisions of the FFCRA expired on December 31, 2020, but the stimulus bill passed in December of 2020, extended the tax credits through March 31, 2021, allowing employers to voluntarily continue to offer emergency paid sick leave and paid FMLA leave to employees who had not yet exhausted their available leave under the programs.

The American Rescue Plan extends that deadline a second time, to September 30, 2021, allowing employers to take advantage of the FFCRA tax credit if they continue to voluntarily offer paid emergency sick leave. The American Rescue Plan makes several other substantial changes to the program.

Under the original version of the FFCRA, employees were eligible for up to 80 hours of paid sick leave for the following reasons:

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- The employee is caring for an individual who has been instructed to isolate or self-quarantine related to COVID-19;
- The employee is caring for their child whose school or place of care has closed, or because the child's childcare provider is unavailable, due to COVID-19 precautions; or
- The employee is experiencing any other substantially similar condition specified by the Department of Health and Human Services ("HHS") in consultation with the Department of Treasury and the Department of Labor ("DOL").

The American Rescue Plan leaves those same reasons in place, while also adding the several additional reasons:

- The employee is seeking or awaiting the results of a COVID-19 test after either being exposed to COVID-19 or after the employee's employer requests the employee be tested;
- The employee is obtaining a COVID-19 vaccination; and

- The employee is recovering from an injury or condition related to the employee receiving the vaccine.

Additionally, the American Rescue Plan resets the 80-hours' worth of time that an employer can receive for the tax credit, as of April 1, 2021. This means that if employees used all or part of the 80 hours of emergency paid sick leave prior to April 1, 2021, their employer can receive a tax credit of up to an additional 80 hours, allowing the employer to provide an additional ten days of paid sick leave to their employees.

The American Rescue Plan also substantially changes the emergency paid-FMLA leave available under the FFCRA. While employees were originally only allowed to take paid-FMLA leave to care for a child due to school closings, the American Rescue Plan allows employees to use the paid-FMLA leave for any of the same reasons they can take the emergency paid sick leave.

Although completely voluntary, the extension of the FFCRA tax credits allows employers to provide employees two additional weeks of paid emergency sick leave and twelve additional weeks of paid-FMLA leave, while receiving tax credits equal to 100% of the costs of such leave.

If you have any questions about the extension to the FFCRA tax credits or questions about the America Rescue Plan's changes to the paid leave qualifications, please contact Denis Jacobson at [djacobson@tuggleduggins.com](mailto:djacobson@tuggleduggins.com) or (336) 271-5242, Ross Hamilton at [rhamilton@tuggleduggins.com](mailto:rhamilton@tuggleduggins.com) or (336) 271-5279, or Daniel Stratton at [dstratton@tuggleduggins.com](mailto:dstratton@tuggleduggins.com). Please also follow our Twitter account @TuggleDuggins at <https://twitter.com/TuggleDuggins> for news and insights related to changes in the law related to the COVID-19 pandemic.

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