HAYS COMPANIES

American Rescue Plan Act Paid Leave Tax Credit Extensions

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARPA) which included an extension of paid leave tax credits for certain employers that voluntarily provide paid leave. The requirements contained within the ARPA follow an extension of credits for these employers that voluntarily provided paid leave under the Consolidated Appropriations Act of 2021 (CAA). The CAA provided extensions of tax credits for voluntary implementation of the paid leave requirements under the Emergency Paid Sick Leave Act (EPSL) and the Emergency Family and Medical Leave Expansion Act (EFML) from the Families First Coronavirus Response Act of 2020 (FFCRA) (a summary of paid leave provisions can be found here DOL FFCRA Provisions). Under the FFCRA, certain employers were required to provide paid leave under specified circumstances.

The paid leave tax credits under the ARPA will apply only to wages pad with respect to calendar quarters beginning after March 31, 2021 and ending on September 30, 2021. Furthermore, under the ARPA, the qualifying reasons for taking leave under the EPSL and the EFML are now the same and include two additional circumstances. Also, the ARPA includes a restart of the 80 hours of available EPFL for purposes of the tax credits.

Eligible Employers and Amount of Credit

These provisions apply to employers with fewer than 500 employees who voluntarily provide paid leave for the specified events mentioned in the ARPA. Determining employer size is based upon the requirements of the EPSL and the EFML.

Application of the tax credit is limited to qualified wages paid during the applicable leave period. It may include the cost of providing health care (generally the cost of the group health care plan coverage). The available tax credit applies to certain employment taxes and should be discussed with your company's tax advisor.

The ARPA has amended the grounds under which an individual can take leave under the EPSL or the EFML, making the grounds the same under both types of leave while also expanding the grounds for eligible leave to include two additional circumstances. Additionally, the ARPA struck the EFML's 10-day elimination period, making the initial 10-day period of EFML eligible for payment.

Paid Sick Leave

The applicable tax credit for each calendar quarter is 100% of the qualified paid sick leave wages paid by the employer for each quarter. The qualifying circumstances under the EPSL include when an employee:

- Is subject to a Federal, State, or local quarantine or isolation order related to COVID–19,
- Has been advised by a health care provider to self-quarantine due to concerns related to COVID–19,
- Is experiencing symptoms of COVID–19 and seeking a medical diagnosis.

- Is caring for an individual subject to a federal, state, or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns,

- Is caring for their child, if the child's school or place of care is closed or the child's care provider is unavailable due to the public health emergency, or

- Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

In addition to the reasons for paid sick leave under Sec. 5102(a) of the EPSL, the ARPA includes two additional qualifying circumstances:

- An employee seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID–19, and such employee has been exposed to COVID–19, or the employee's employer has requested such test or diagnosis, or

- The employee is obtaining immunization related to COVID–19 or recovering from any injury, disability, illness, or condition related to such immunization.

The tax credit is available for a new bank of 80 hours of EPSL paid sick leave for full-time employees beginning April 1, 2021. For part-time employees, the employer may use the work hours averaged over two weeks. The credit is up $200 per day for individuals caring for an individual to quarantine or due to school closures and daycare provider closures and up to $511 for all other reasons.

Paid Family Leave

The applicable tax credit for each calendar quarter is 100% of the qualified paid family leave wages paid by the employer for each quarter. The qualifying circumstances under the EFML have been expanded to include the reasons provided for leave under the EPSL and in addition:

- An employee seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID–19, and such employee has been exposed to COVID–19, or the employee's employer has requested such test or diagnosis, or

- The employee is obtaining immunization related to COVID–19 or recovering from any injury, disability, illness, or condition related to such immunization.

- The credit will not exceed $200, and in the aggregate, with respect to all calendar quarters, combined paid family leave and paid sick leave benefits are limited to $12,000.

Nondiscrimination

No credit will be allowed to any employer for any calendar quarter if such employer, with respect to the availability of the provision of qualified sick leave wages for such calendar quarter, discriminates in favor of highly compensated employees (within the meaning of section 414(q)), full-time employees, or employees on the basis of employment tenure with such employer.

Summary

Employers that intend to voluntarily provide paid leave under the EPSL and the EFML and claim the tax credit under this part of the ARPA should review the prior requirements of the Emergency Paid Sick Leave Act and Emergency Paid Family Leave Act to determine whether to implement these available paid sick leaves.

However, there are still lingering questions regarding the mechanics of new voluntary paid leave under the ARPA. For example, it is not clear whether an affected employer can voluntarily elect to provide just the EPSL portion without implementing the EFML requirements. Further guidance from the Department of Labor and Treasury is expected. The Hays Companies Research and Compliance Team will continue to monitor these developments.

Employers contemplating implanting these voluntary provisions should discuss this with their employment law counsel.

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