

## American Rescue Plan Act Extends Optional EPSL and EFMLA

On March 11, 2021, President Joe Biden signed the American Rescue Plan Act of 2021 ([HR 1319](#))(ARP), to address the ongoing economic impacts of COVID-19. Most of the law does not directly affect the HR function, but portions that do are discussed in this alert. The ARP is essentially an extension of the current tax credit scheme for Emergency Paid Sick Leave (EPSL) and Emergency Family and Medical Leave (EFMLA) under the Families First Coronavirus Response Act (FFCRA). The FFCRA required many employers to provide EPSL and EFMLA in 2020, but became optional when it was extended to cover January 1 through March 31, 2021.

The ARP is effective April 1, 2021, and lasts through September 30, 2021. In other words, it covers wages paid for leave from April 1 through September 30, 2021. However, it remains an optional leave that allows for tax credits, but only to employers with fewer than 500 employees and up to certain caps. To receive the tax credit, employers are required to follow the provisions of the FFCRA as though they are mandatory. For example, employers cannot deny EPSL or EFMLA leave to an employee if they're otherwise eligible and cannot terminate an employee for taking EPSL or EFMLA leave.

### Emergency Paid Sick Leave (EPSL) Changes

Key changes to EPSL, effective from April 1 through September 30, 2021, are as follows:

- Employees can take EPSL for reasons related to vaccination, including time off to get the vaccine and to recover from any related side effects.
- Employees can take EPSL when seeking or waiting for a COVID-19 diagnosis or test result if they've been exposed to COVID-19 or the employer has asked the employee to get a diagnosis or test. (Previously, time spent waiting on test results was not necessarily covered.)
- Employees will be eligible for a new leave bank of two weeks on April 1. That means 80 hours for full-time employees and a prorated amount for part-time employees. Unused hours from before April 1 will not carry over.
- Employers cannot provide EPSL in a manner that favors highly compensated employees or full-time employees or that discriminates based on how long employees have worked for the employer. This is discriminatory and will disqualify the employer from receiving the tax credit. Failing to comply with the FFCRA (including its antiretaliation provisions) also disqualifies employers from receiving the tax credit.

### Emergency Family and Medical Leave (EFMLA) Changes

Key changes to EFMLA effective from April 1 through September 30, 2021 are as follows:

- EFMLA can now be used for any EPSL reason, in addition to the original childcare reasons. This includes the two new EPSL reasons noted above.
- The 10-day unpaid waiting period has been eliminated.
- The aggregate cap on EFMLA has been increased to \$12,000 (from \$10,000). This change accounts for the additional 10 days of paid time off—the daily cap of \$200 remains the same.
- Employers cannot provide EFMLA in a manner that favors highly compensated employees or full-time employees or that is based on tenure.

## Reasons for Using EPSL and EFMLA

Employees may now take EPSL or EFMLA under the same conditions, which are:

- When quarantined or isolated subject to federal, state, or local quarantine or isolation order.
- When advised by a health care provider to self-quarantine because of COVID-19.
- When the employee is:
  - Experiencing symptoms of COVID-19 and seeking a medical diagnosis.
  - Seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 because they have been exposed or because their employer has requested the test or diagnosis.
  - Obtaining a COVID-19 vaccination or recovering from any injury, disability, illness, or condition related to the vaccination
- When caring for another person who is isolating or quarantining on government or doctor's orders (2/3 pay).
- When caring for a child whose school or place of care is closed due to COVID-19 (2/3 pay).

**Note:** EPSL offers a higher tax credit except when used for care for others.

## Tax Credit Review

The tax credits remain unchanged, except for the increased aggregate cap for EFMLA. For instance,

- The credit available for most EPSL uses is up to 100 percent of an employee's regular pay, with a limit of \$511 per day and an aggregate cap of \$5,110 per employee. If an employee is using EPSL for childcare purposes, or to care for another person, the daily limits are the same as for EFMLA.
- The credit available for EFMLA is up to 2/3 of an employee's regular pay, with a limit of \$200 per day and an aggregate cap of \$12,000 per employee.

Employers can also claim a credit for their share of Medicare tax on the employee's wages and the cost of maintaining the employee's health insurance (qualified health plan expenses) during their absence.

## Additional Information

The White House has a [website](#) dedicated to the ARP and [according to the IRS](#), "it is reviewing implementation plans for the ARP. Additional information about a new round of Economic Impact Payments, the expanded Child Tax Credit, including advance payments of the Child Tax Credit, and other tax provisions will be made available as soon as possible on IRS.gov. The IRS strongly urges taxpayers to not file amended returns related to the new legislative provisions or take other unnecessary steps at this time."

"The IRS will provide taxpayers with additional guidance on those provisions that could affect their 2020 tax return, including the retroactive provision that makes the first \$10,200 of 2020 unemployment benefits nontaxable. For those who haven't filed yet, the IRS will provide a worksheet for paper filers and work with software industry to update current tax software so that taxpayers can determine how to report their unemployment income on their 2020 tax return. For those who received unemployment benefits last year and have already filed their 2020 tax return, the IRS emphasizes they should not file an amended return at this time, until the IRS issues additional guidance."

## CDC Guidance for Fully Vaccinated

On March 8, 2021, the Centers for Disease Control and Prevention (CDC) released its first [Interim Public Health Recommendations for Fully Vaccinated People](#) guidance under which fully vaccinated people can:

- Visit with other fully vaccinated people indoors without wearing masks or physical distancing.
- Visit with unvaccinated people from a single household who are at low risk for severe COVID-19 disease indoors without wearing masks or physical distancing.
- Refrain from quarantine and testing following a known exposure if asymptomatic.

However, the CDC recommends that fully vaccinated people should continue to:

- Take precautions in public like wearing a well-fitted mask and physical distancing.
- Wear masks, practice physical distancing, and adhere to other prevention measures when visiting with unvaccinated people who are at increased risk for severe COVID-19 disease, including household members.
- Wear masks, maintain physical distance, and practice other prevention measures when visiting with unvaccinated people from multiple households.
- Avoid medium- and large-sized in-person gatherings.
- Get tested if experiencing COVID-19 symptoms.
- Follow guidance issued by individual employers.
- Follow CDC and health department travel requirements and recommendations.