

New FFCRA Extension

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PILLAR+AUGHT

The OLD "Quick & Dirty" Reference Slide

QUALIFYING REASONS FOR LEAVE: An employee qualifies for extended family and medical leave if he/she is unable to work (or "telework") because:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and seeking a medical diagnosis;
4. is caring for an individual subject to a quarantine or isolation order related to COVID-19;
5. is caring for a child whose school or day care is closed (or child care provider is unavailable) for reasons related to COVID-19;
6. is experiencing a serious, substantially-similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Labor.

DUPLICATE LEAVE:

For reasons (1)-(4) or (6): Full-time EEs are eligible for 80 hours of EFL leave for the number of hours of leave that they normally work over a 2-week period.

For reason (5): Full-time EEs are eligible for up to 12 weeks of leave (2 weeks of leave followed by 10 weeks of leave) if they work 40 hours a week, and part-time EEs are eligible for leave for the number of hours that they are normally scheduled to work over that period.

AMOUNT OF PAY:

For reasons (1)-(3): EEs are entitled to pay at their regular rate up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

For reasons (4) or (6): EEs are entitled to pay at 2/3 their regular rate up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

For reason (5): EEs are entitled to pay at 2/3 their regular rate up to \$200 per day and \$12,000 in the aggregate (over a 12-week period).





FFCRA

December 31, 2020

March 31, 2021

September 30, 2021



**JUST WHEN I THOUGHT I WAS OUT
THEY PULL ME BACK IN**

Enter: The American Rescue Plan...

Among (a lot of) other things, the American Rescue Plan extends the availability of payroll tax credits to employers who voluntarily decide to continue providing FFCRA paid leave benefits to employees through September 30, 2021. There are several changes as to how the FFCRA is to be implemented regarding both Emergency Paid Sick Leave (**EPSL**) and Emergency/Expanded Family and Medical Leave (**EFML**):

- **NEW QUALIFYING REASONS FOR PAID LEAVE IF THE EMPLOYEE IS...**
 - obtaining a COVID-19 vaccine;
 - recovering from any illness or condition related to the COVID-19 vaccine; or
 - seeking or awaiting the results of a COVID-19 diagnosis or test if either the employee has been exposed to COVID-19 or the employer requested the test or diagnosis.
- **NEW EPSL LEAVE BANK AS OF APRIL 1, 2021**
 - The new law refreshes the 10-day bank for FFCRA paid sick leave (EPSL), effective April 1, 2021. As such, employees who may have previously exhausted their FFCRA sick leave prior to April 1st will once again be eligible for up to 10 days of EPSL, and employers will be able to take tax credits for such leave if they choose to provide it (before requiring the use of other available PTO or paid leave).
 - **NOTE:** *This does not mean employees are eligible for up to 20 days of EPSL. The available "bank" of time resets on April 1st.*
- **NEW EFMLA EXPANSION**
 - Previously, EFML could only be taken by an employee who was unable to work because he/she was caring for a child whose school or place of care was closed, or whose care provider was unavailable for reasons related to COVID-19.
 - Beginning April 1st, EFMLA can be taken for all of the qualifying reasons that an employee can take EPSL.
 - The aggregate cap for paid EFML (and thus tax credits) has been raised to \$12,000 (up from \$10,000), because the 2 weeks of EPSL now count as EMFL leave for all purposes.
- **NEW NON-DISCRIMINATION RULES**
 - FFCRA tax credits are not available to employers who discriminate in favor of highly compensated employees, full-time employees, or employees on the basis of tenure when providing FFCRA benefits.



The NEW Quick & Dirty Reference Slides

Qualifying Reason for Leave: The Employee...	Emergency Paid Sick Leave (up to 2 weeks/80 hours)	Emergency/Expanded Family and Medical Leave (up to 12 weeks/480 hours)
(1) ... is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.	Payroll tax credit credit not to exceed: \$511/day (\$5,110 in the aggregate)	Payroll tax credit credit not to exceed: \$200/day (\$12,000 in the aggregate)
(2) ... has been advised by a health care provider to self-quarantine for concerns related to COVID-19.	Payroll tax credit credit not to exceed: \$511/day (\$5,110 in the aggregate)	Payroll tax credit credit not to exceed: \$200/day (\$12,000 in the aggregate)
(3) ... is experiencing symptoms of COVID-19 and seeking a medical diagnosis.	Payroll tax credit credit not to exceed: \$511/day (\$5,110 in the aggregate)	Payroll tax credit credit not to exceed: \$200/day (\$12,000 in the aggregate)
(4) ... is caring for an individual who is subject to an order described in (1) or self-quarantine as described in (2).	Payroll tax credit credit not to exceed: \$200/day (\$2,000 in the aggregate)	Payroll tax credit credit not to exceed: \$200/day (\$12,000 in the aggregate)
(5) ... is caring for his/her child whose school or place of care is closed (or childcare provider is unavailable) due to COVID-19 related reasons.	Payroll tax credit credit not to exceed: \$200/day (\$2,000 in the aggregate)	Payroll tax credit credit not to exceed: \$200/day (\$12,000 in the aggregate)
(6) ... is experiencing any other substantially-similar condition specified by HHS.	Payroll tax credit credit not to exceed: \$200/day (\$2,000 in the aggregate)	Payroll tax credit credit not to exceed: \$200/day (\$12,000 in the aggregate)
(7) ... is seeking or awaiting the results of a COVID-19 diagnosis or test if either the employee has been exposed to COVID-19 or the employer requested the test or diagnosis.	Payroll tax credit credit not to exceed: \$511/day (\$5,110 in the aggregate)	Payroll tax credit credit not to exceed: \$200/day (\$12,000 in the aggregate)
(8) ... is obtaining a COVID-19 vaccine.	Payroll tax credit credit not to exceed: \$511/day (\$5,110 in the aggregate)	Payroll tax credit credit not to exceed: \$200/day (\$12,000 in the aggregate)
(9) ... is recovering from any illness or condition related to the COVID-19 vaccine.	Payroll tax credit credit not to exceed: \$511/day (\$5,110 in the aggregate)	Payroll tax credit credit not to exceed: \$200/day (\$12,000 in the aggregate)

WATCH THIS SPACE...

The screenshot shows the U.S. Department of Labor Wage and Hour Division website. The page title is "Families First Coronavirus Response Act: Questions and Answers". A blue notification box is present, stating: "FFCRA Leave Requirements Expired Dec. 31, 2020". The text inside the box reads: "The requirement that employers provide paid sick leave and expanded family and medical leave under the Families First Coronavirus Response Act (FFCRA) expired on Dec. 31, 2020. Please visit the Wage and Hour Division's [FFCRA Questions and Answers](#) page to learn more about workers' and employers' rights and responsibilities after this date."

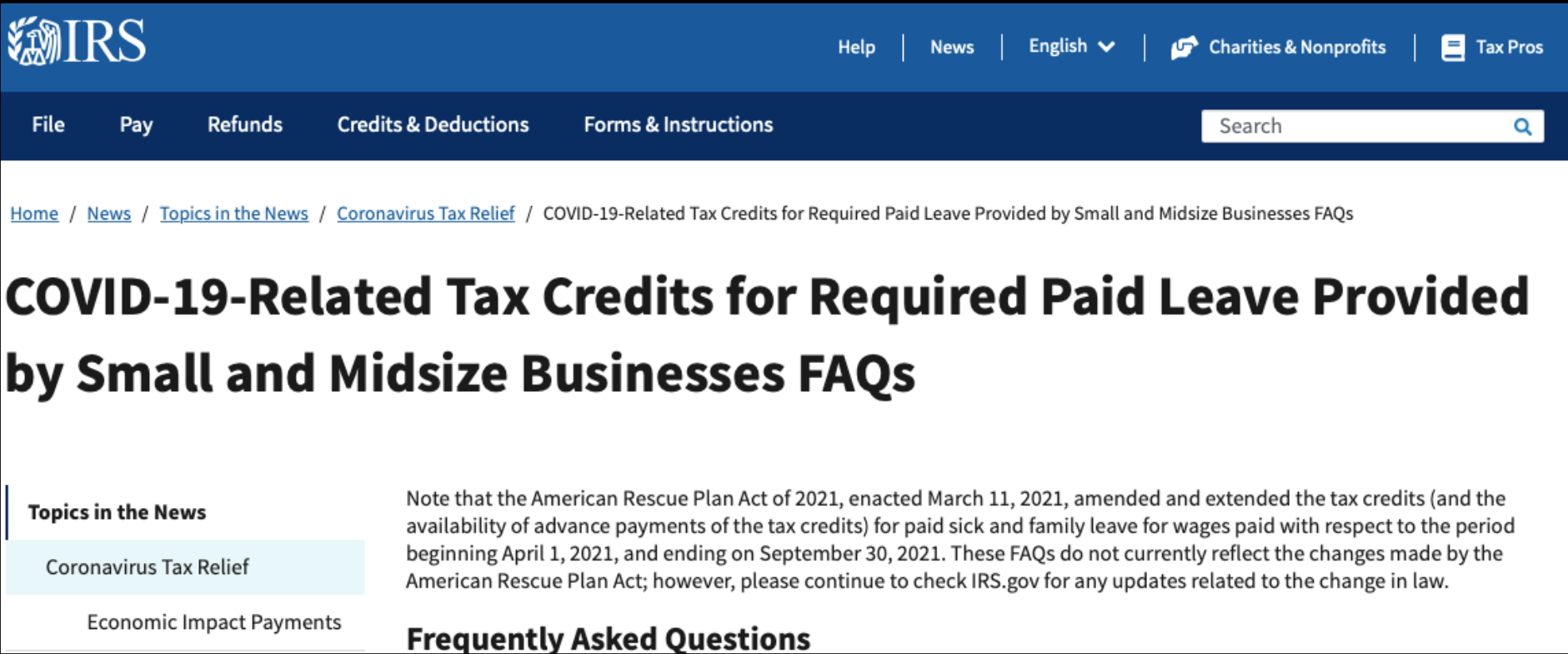
104. I was eligible for leave under the FFCRA in 2020 but I did not use any leave. Am I still entitled to take paid sick or expanded family and medical leave after December 31, 2020? (added 12/31/2020)

Your employer is not required to provide you with FFCRA leave after December 31, 2020, but your employer may voluntarily decide to provide you such leave. The obligation to provide FFCRA leave applies from the law's effective date of April 1, 2020, through December 31, 2020. Any change to extend the requirement to provide leave under the FFCRA would require an amendment to the statute by Congress. The Consolidated Appropriations Act, 2021, extended employer tax credits for paid sick leave and expanded family and medical leave voluntarily provided to employees until March 31, 2021. However, this Act did not extend an eligible employee's entitlement to FFCRA leave beyond December 31, 2020.

Employers with questions about claiming the refundable tax credits for qualified leave wages should consult with the IRS. Information can be found on the IRS website (<http://www.irs.gov/coronavirus/new-employer-tax-credits>).

Source: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

SO... WATCH THIS SPACE, TOO...



The screenshot shows the IRS website header with the IRS logo on the left and navigation links for Help, News, English, Charities & Nonprofits, and Tax Pros on the right. Below the header is a dark blue navigation bar with links for File, Pay, Refunds, Credits & Deductions, and Forms & Instructions, along with a search bar. The main content area features a breadcrumb trail: Home / News / Topics in the News / Coronavirus Tax Relief / COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs. The article title is "COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs". A "Topics in the News" sidebar lists "Coronavirus Tax Relief" and "Economic Impact Payments". The main text includes a note about the American Rescue Plan Act of 2021 and a "Frequently Asked Questions" section.

IRS

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Home / News / Topics in the News / Coronavirus Tax Relief / COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs

COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs

Topics in the News

- Coronavirus Tax Relief
- Economic Impact Payments

Note that the American Rescue Plan Act of 2021, enacted March 11, 2021, amended and extended the tax credits (and the availability of advance payments of the tax credits) for paid sick and family leave for wages paid with respect to the period beginning April 1, 2021, and ending on September 30, 2021. These FAQs do not currently reflect the changes made by the American Rescue Plan Act; however, please continue to check IRS.gov for any updates related to the change in law.

Frequently Asked Questions

Source: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>



In the meantime...

Q: Well, this was boring. Do we have to do any of this???

A: Nope! But it is certainly worth considering, given the benefit of providing paid time off to encourage employees to get vaccinated and to ensure the safety and health of the workforce by supporting COVID-related absences due to exposure and illness. (And being able to do so without such a financial hit to the business is a big plus.)

Q: Oh, good point. If we didn't provide FFCRA leave to our employees in connection with the previous voluntary extension (from January 1, 2021 to March 31, 2021), are we able to provide FFCRA benefits and recoup the corresponding payroll tax credits starting April 1, 2021?

A: Yes! That \$1.9 trillion isn't going to spend itself...

Q: Are we able to selectively pick and choose which FFCRA qualifying reasons we will compensate (and then seek the corresponding payroll tax credits) and which we will not? For example, can we provide EPSL and EFML for the "new" reasons (*e.g.*, getting a vaccination), but not the others? After all, this is supposed to be voluntary...

A: Good thought, but no. Failure to comply with any requirement of the Emergency Family and Medical Leave Expansion Act or the Emergency Paid Sick Leave Act (from the original FFCRA) disqualifies the employer from obtaining tax credits for leave paid under either Act. If an employer voluntarily opts to provide EPSL and/or EFML, it cannot "change" the rules or alter how the leave should be applied.

Q: If that's the case, are we able to provide our employees with just EPSL (i.e. capped at 10 days) and NOT offer or provide paid EFML? We want to help our employees, but we really don't want to pay someone to be out for 14(!?! weeks. (And don't think we didn't see that "and/or" in your previous answer...)

A: Most likely, yes... although it would be helpful to get further guidance on this issue from the IRS. Because both FFCRA leave benefits (EPSL and EFML) are addressed separately, the prevailing consensus at this time is that employers can opt to provide one, but not the other. (Keep in mind, however, that "traditional" FMLA principles will still apply if you are a covered employer.)



QUESTIONS?

