

PUBLICATION

Employers Should Decide Soon: Voluntary Extension of FFCRA Benefits Effective April 1

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On March 11, 2021, the American Rescue Plan Act of 2021 (ARPA) provided that employers may once again voluntarily extend Emergency Paid Sick Leave (EPSL) and Emergency Family and Medical Leave Expansion Act (EFMLEA) provisions of the Families First Coronavirus Response Act (FFCRA) to employees and receive those tax credits. This time the extension runs through September 30, 2021, and further modifies the benefits that employees may receive *if* employers decide to voluntarily extend the benefits effective April 1, 2021. Stated plainly, while ARPA does not mandate that covered employers continue to provide EPSL and EFMLEA to employees as the FFCRA provided in 2020, ARPA does broaden the qualifying reasons for the tax credit and provides a new bank of EPSL.

How Much Leave May Employers Provide Under the ARPA?

Covered employers may voluntarily continue to provide EPSL; however, to be eligible for the applicable tax credit, an employer *must* provide a new bank of EPSL of up to ten days for employees' use beginning on April 1, 2021 and ending on September 30, 2021. Further, employers may voluntarily continue to provide employees with any remaining EPSL they would have been entitled to under the FFCRA and the Consolidated Appropriations Act of 2021 (CAA). For example, if a full-time employee had used eight of the original ten days available to them through March 31, then as of April 1, the employer may voluntarily provide them with 12 days (two remaining days, plus the ten new days).

The ARPA does not create a new bank of EFMLEA, which remains capped at 12 weeks. However, it does provide that the first two weeks of EFMLEA can be paid and employers may seek the corresponding tax credit for those two weeks (previously, the first two weeks were unpaid, but an employee could use available EPSL for those weeks), and it increases the maximum amount of FFCRA tax credits for EFMLEA from \$10,000 to \$12,000 in the aggregate per employee.

Employers may elect to extend just EPSL benefits, just EFMLEA benefits, or both.

What are the Qualifying Reasons for Leave Under the ARPA?

The FFCRA's original six qualifying reasons included the following:

- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- the employee is subject to the advice of a health care provider to self-quarantine related to COVID-19;
- The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- The employee is caring for an individual subject to an order described in (i) or in self-quarantine as described in (ii);
- The employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
- The employee is experiencing any other substantially similar condition identified by the Secretary of Health and Human Services.

The ARPA adds additional qualifying reasons as follows:

- The employee is obtaining a COVID-19 vaccination;
- The employee is recovering from an injury, disability, illness or condition related to a COVID-19 vaccination; or
- The employee is seeking or awaiting the results of a COVID-19 test or diagnosis because either the employee has been exposed to COVID-19 or the employer requested the test or diagnosis.

Under the ARPA, employees may use *either* EPSL or EFMLEA for *any* of the original or new qualifying reasons.

What Should Employers Consider?

Employers should first decide whether they will continue to provide just EPSL, just EFMLEA, or both sets of benefits through September 30, 2021. Employers choosing not to continue providing one or both sets of benefits should remove reference to the benefits from any policies and handbook, and take down the FFCRA poster.

Employers who voluntarily extend ESPL and/or EFMLEA benefits as of April 1, 2021, should communicate that decision to employees along with the new September 30, 2021 end date. Employers should continue to assess whether "regular" FMLA leave runs concurrently with any EPSL or EFMLEA leave taken by an employee. In such cases, employers who are covered under the federal FMLA (those with 50 or more employees) must follow the normal processes governing administration of FMLA leave. The ARPA, like the CAA, only expands the tax credit provision for employers; therefore, it does not appear to permit employers to count EFMLEA against an employee's "regular" FMLA entitlement as was the case with the now expired FFCRA.

If you have any questions, please contact the author or any member of Baker Donelson's [Labor & Employment Team](#).