

LEGAL UPDATES

PUBLISHED: AUGUST 11, 2021

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## IRS Expands Employer Tax Credits for Paid COVID-19 Vaccination Leave

On July 29, 2021, the Internal Revenue Service (IRS) updated the FAQs relating to paid sick and family leave tax credits under the American Rescue Plan Act of 2021 (ARPA). The update adds provisions that expand the application of tax credits for eligible employers to include wages paid voluntarily for leave taken by employees to 1) accompany other qualifying individuals to obtain a COVID-19 vaccine, and 2) care for such qualifying individuals during their recovery from an adverse condition related to the COVID-19 vaccination.

### Review of COVID-19-related tax credits

Beginning on April 1, 2020, under the Families First Coronavirus Response Act (FFCRA) eligible employers that provided leave under the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (Expanded FMLA) were entitled to claim a fully refundable tax credit to reimburse eligible employers for the cost of providing paid sick and family leave related to COVID-19. The paid leave mandate expired in December 2020. The COVID-Related Tax Relief Act of 2020 amended FFCRA to extend the period for which eligible employers may claim tax credits for voluntarily providing paid sick and family leave to employees that satisfy the requirements of the EPSLA or Expanded FMLA from December 31, 2020 to March 31, 2021.

### Tax credits expanded under the American Rescue Plan Act

In April 2021, the IRS announced that eligible employers, such as businesses and tax-exempt organizations with less than 500 employees and certain governmental employers, can claim tax credits related to wages paid voluntarily for leave taken by employees during the period of April 1, 2021 – September 30, 2021 to obtain a COVID-19 vaccination and to recover from

illness or adverse conditions related to the vaccine. The paid sick leave tax credit is similar to the tax credits provided under the Families First Coronavirus Response Act (FFCRA).

To further boost vaccination rates, on July 29, 2021, the IRS clarified that the tax credits cover wages voluntarily paid to employees who take time off to assist qualifying individuals who seek to obtain a vaccine, and to care for such individuals during recovery from side effects or negative conditions related to the vaccine.

Under certain provisions of the tax code, eligible employers may claim a tax credit for voluntary payment of qualified sick leave wages or family leave wages to an employee who is experiencing any other “substantially similar condition” specified by the Department of Health and Human Services as provided under the EPSLA and Expanded FMLA, as amended. In the July update, FAQs 27a, 38 and 38a provide that the term “substantially similar condition” extends to an employee who takes leave to accompany an individual to obtain a COVID-19 vaccine, or to care for an individual who is recovering from any injury, disability, illness, or condition related to the vaccination. As under the provisions of FFCRA, the term “individual” refers to an immediate family member, someone who regularly resides in the employee’s home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person. The term does not include individuals with whom the employee has no personal relationship.

Eligible employers may claim a fully refundable tax credit equal to 100% of the qualified sick and family leave wages and other wage related expenses paid by the employer. The maximum amount of qualified sick leave wages paid to an employee for COVID-19-related reasons, including to obtain a vaccination for the employee and for time spent by the employee to recover from adverse effects of the vaccine for up to 80 hours remains at a maximum of \$511 per day and \$5,110 in the aggregate at the employee’s regular rate of pay.

According to the IRS, the tax credit for paid family leave wages “is equal to the family leave wages paid for up to twelve weeks, limited to \$200 per day and \$12,000 in the aggregate, at 2/3rds of the employee’s regular rate of pay.” For the purpose of claiming the tax credits, qualified family leave wages and qualified sick leave wages cannot be claimed for the same hours.

### **What this means to you**

As we indicated in our recent commentary, the Biden administration is intent on reducing obstacles to getting a COVID-19 vaccine and boosting vaccination rates across the country. The latest IRS FAQ updates, discussed above, are part of the administration’s efforts to reign in the continued proliferation of COVID-19 infections.

As a result, eligible employers now may claim tax credits for qualified leave wages and certain other wage related expenses related to voluntarily paid leave provided to an employee to either obtain and recover from their own COVID-19 vaccination, or to accompany an individual with a qualifying relationship to the employee who seeks to obtain a vaccination and to care for such individual while the individual recovers from side effects related to the vaccination.

## **Contact us**

If you have questions about the latest IRS changes regarding tax credits available to eligible employers that provide employees paid leave related to COVID-19 vaccinations and recovery from the vaccinations for the employee or qualifying individuals, contact, Erik Eisenmann, Michaeli Hennessy, Courtney Steelman or your Husch Blackwell attorney.

## **Your comprehensive COVID-19 legal resource**

Since the pandemic's onset, Husch Blackwell has continually monitored state-by-state orders regarding capacity, masking, vaccines, and more. We regularly address your FAQs and provide you with easy-to-use COVID-19 tools about returning to work and navigating federal programs. Contact our industry-specific legal teams or your Husch Blackwell attorney to plan through and beyond the pandemic.