



Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Determining the Amount of the Tax Credit for Qualified Family Leave Wages

Note: These FAQs address the tax credits available under the American Rescue Plan Act of 2021 (the "ARP") by employers with fewer than 500 employees and certain governmental employers without regard to the number of employees ("Eligible Employers") for qualified sick and family leave wages ("qualified leave wages") paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021, as well as the equivalent credits available for certain self-employed individuals. For information about the tax credits that may be claimed for qualified leave wages paid with respect to leave taken by employees prior to April 1, 2021, under the Families First Coronavirus Response Act ("FFCRA") and the COVID-related Tax Relief Act (the "Relief Act"), see [Tax Credits for Paid Leave Under the Families First Coronavirus Response Act for Leave Prior to April 1, 2021 FAQs](#).

Although the requirement that Eligible Employers provide leave under the Emergency Paid Sick Leave Act ("EPSLA") and Emergency Family and Medical Leave Expansion Act ("Expanded FMLA") under the FFCRA does not apply after December 31, 2020, the tax credits under sections 3131 through 3133 of the Internal Revenue Code ("the Code") are available for qualified leave wages an Eligible Employer provides with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021, if the leave would have satisfied the requirements of the EPSLA and Expanded FMLA, as amended for purposes of the ARP.

Throughout these FAQs, the use of the word "work," unless otherwise noted, is inclusive of telework.

36. What is included in "qualified family leave wages"? (updated July 29, 2021)

Qualified family leave wages are wages (as defined in section 3121(a) of the Code, determined without regard to the exclusions from employment under section 3121(b)(1)-(22) of the Code) and compensation (as defined in section 3231(e) of the Code, determined without regard to the exclusions from compensation under section 3231(e)(1) of the Code) that Eligible Employers pay with respect to leave taken by an employee during which the employee is unable to work because the 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,
 - seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 and the employee has been exposed to COVID-19 or the employee's employer has requested the test or diagnosis, or
 - obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to the immunization;
- is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- is caring for a child of the employee if the school or place of care of the child has been closed (including the closure of a summer camp, summer enrichment program, or other summer program), or the child care provider of the child is unavailable due to COVID-19 precautions; or
- is experiencing any other substantially similar condition specified by the Secretary of HHS in consultation with the Secretary of the Treasury and the Secretary of Labor. The Secretary of HHS has specified, after consultation with the Secretaries of Treasury and Labor, that a substantially similar condition is one in which the employee takes leave:
 - to accompany an individual to obtain immunization related to COVID-19, or
 - to care for an individual who is recovering from any injury, disability, illness, or condition related to the immunization.

The Eligible Employer may provide the employee with qualified family leave wages for up to 12 weeks.

37. Do "qualified family leave wages" include taxes imposed on or withheld from the wages? (added June 11, 2021)

For purposes of the credit, qualified family leave wages are calculated without regard to federal taxes imposed on or withheld from the wages, including the employee's and employer's share of social security taxes, the employee's and employer's share of Medicare tax, and federal income taxes required to be withheld.

Note: Under sections 3132 and 3133 of the Code, as added by the ARP, qualified family leave wages are subject to the employer's share of social security tax and Medicare tax, but the tax credit that an Eligible Employer receives for paying qualified family leave wages is increased by the employer's share of social security and Medicare taxes imposed on the qualified family leave wages. Qualified family leave wages under the FFCRA paid with respect to leave taken by employees prior to April 1, 2021, are only subject to the employer's share of Medicare tax (and not the employer's share of social security tax); therefore, the Eligible Employer is entitled to receive credits to offset only Medicare tax for leave for those periods. For more information about qualified family leave wages paid with respect to leave taken prior to April 1, 2021, see [Tax Credits for Paid Leave Under the Families First Coronavirus Response Act for Leave Prior to April 1, 2021 FAQs](#).

38. Do qualified family leave wages include wages paid for leave taken for COVID-19 testing, to receive a vaccination or to recover from vaccination? (updated July 29, 2021)

Yes. The ARP further expanded the Expanded FMLA reasons for employers to pay qualified family leave wages to include all of the reasons under the EPSLA section 5102(a), as amended by the ARP, including for COVID-19 testing, to receive vaccination or to recover from vaccination. That is, qualified family leave wages include wages paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021, during which an employee is unable to work because the employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 and the employee has been exposed to COVID-19 or the employee's employer has requested the test or diagnosis, or the employee is obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to the immunization. Qualified family leave wages also include wages paid to an employee who is under a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, or has COVID-19 symptoms and is seeking a medical diagnosis, or the employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, or for a child whose school or place of care is closed or child care provider is unavailable due to COVID-19 precautions.

Although the reasons for Eligible Employers to pay employees the qualified family leave wages are the same as for the qualified sick leave wages, the wages cannot be for the same hours for purposes of claiming the credits.

38a. Do "qualified family leave wages" include wages paid for leave taken to accompany an individual who is obtaining a vaccination or to care for an individual who is recovering from vaccination? (added July 29, 2021)

Yes. Under the ARP, all of the reasons for which qualified sick leave wages may be paid are also reasons for which qualified family leave wages may be paid. Furthermore, under section 5102(a)(6) of the FFCRA, an Eligible Employer may pay qualified sick leave wages to an employee who is experiencing any other "substantially similar condition," as specified by the Secretary of HHS, in consultation with the Secretary of the Treasury and the Secretary of Labor, to a condition for which the Eligible Employer may otherwise pay qualified sick leave wages. Thus, because the Secretary of HHS has specified, in consultation with the Secretaries of Treasury and Labor, that an employee who takes leave to accompany an individual to obtain immunization related to COVID-19, or to care for an individual who is recovering from any injury, disability, illness, or condition related to the immunization, is experiencing a "substantially similar condition" under section 5102(a)(6) for which the Eligible Employer may pay qualified sick leave wages, an Eligible Employer may also pay qualified family leave wages for these reasons.

The HHS Secretary further specified that, for this purpose, "individual" has the same meaning as was assigned to that term in 29 CFR 826.20(a)(5) for purposes of the FFCRA. Thus, "individual" means 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. For this purpose, "individual" does not include persons with whom the employee has no personal relationship.

Although the reasons for Eligible Employers to pay employees the qualified family leave wages are the same as for the qualified sick leave wages, the wages cannot be for the same hours for purposes of claiming the credits.

39. What is the amount of the credit that an Eligible Employer may receive for qualified family leave wages? (added June 11, 2021)

An Eligible Employer may claim a fully refundable tax credit equal to 100 percent of the qualified family leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified family leave wages) it pays. The maximum amount of qualified leave wages (including certain collectively bargained contributions) paid to an employee that may be taken into account is \$200 per day, and \$12,000 in the aggregate.

For more information about how to determine the amount of family leave wages for which an Eligible Employer may receive credit, see "How does an Eligible Employer determine the amounts and rate of pay of the qualified family leave wages to pay?"

40. How does an Eligible Employer determine the amounts and rate of pay of the qualified family leave wages to pay? (added June 11, 2021)

Under the ARP, an Eligible Employer may provide an employee with qualified family leave wages for up to 12 weeks. To be able to claim the credit, the Eligible Employer pays the employee qualified family leave wages in an amount equal to at least 2/3 the employee's regular rate of pay (as determined under section 7(e) of the FLSA), multiplied by the number of hours the employee otherwise would have been scheduled to work, not to exceed \$200 per day and \$12,000 in the aggregate for leave taken by employees beginning on April 1, 2021, through September 30, 2021.

The \$12,000 in qualified family leave wages for which an Eligible Employer may claim a tax credit under section 3132 of the Code is determined without regard to any qualified family leave wages that it paid with respect to leave taken by employees prior to the April 1, 2021. That is, the ARP "reset" the maximum amount of paid family leave for which an employer may claim tax credits for wages paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021; unused paid family leave for which an Eligible Employer did not claim tax credits under the FFCRA with respect to periods prior to April 1, 2021 does not increase the paid family leave for which an Eligible Employer may claim tax credits under the ARP, and paid family leave for which an Eligible Employer claimed tax credits under the FFCRA with respect to periods prior to April 1, 2021 does not reduce the paid family leave for which an Eligible Employer may claim tax credits under the ARP.

41. Are amounts other than qualified family leave wages included in the tax credit for paid family leave? (added June 11, 2021)

Yes. The credit for paid family leave under section 3132 of the Code is increased by the amount of allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security tax and Medicare tax imposed on the qualified family leave wages paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021.

For more information about the additions to the tax credit for allocable qualified health plan expenses and certain collectively bargained contributions, see "[Determining the Amount of Allocable Qualified Health Plan Expenses](#)," and "[Determining the Amount of Allocable Collectively Bargained Contributions](#)," respectively.

42. Are amounts other than qualified family leave wages included in the amounts subject to the maximum daily and aggregate limits? (added June 11, 2021)

Yes. The collectively bargained contributions are added to the qualified family leave wages in applying the maximum daily and aggregate limits. That is, the maximum amount of qualified family leave wages and certain collectively bargained contributions for which an Eligible Employer may claim the tax credit is \$200 per day or \$12,000 in the aggregate. In contrast, the allocable qualified health plan expenses and the employer's share of social security and Medicare taxes imposed on the qualified family leave wages are not included for the purposes of the maximum daily or aggregate limits.

43. Is a similar tax credit available to self-employed individuals? (added June 11, 2021)

Yes. Section 9643 of the ARP also provides a comparable credit for self-employed individuals carrying on any trade or business within the meaning of section 1402 of the Code if the self-employed individual would be eligible to receive paid family leave that would have satisfied the requirements of the Expanded FMLA, as amended for purposes of the ARP, if the individual were an employee of an Eligible Employer (other than the self-employed individual).

For more information, "[Specific Provisions Related to Self-Employed Individuals.](#)"

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