

TO: Iowa Extension Council Association

RE: FFCRA Paid Leave and Tax Credits

DATE: April 2021

AMERICAN RESCUE PLAN ACT

In 2020, Congress passed the Families First Coronavirus Relief Act (FFCRA). Under the FFCRA, employees were eligible for two weeks (up to 80 hours) of emergency paid sick leave for COVID-19-related reasons. Employees were also eligible for several weeks of qualifying paid family leave if their child's school or childcare provider was unavailable due to COVID-19. From April 1-December 31, 2020, public employers were required to offer employees paid FFCRA leave, but were not eligible for tax credits.

Under the recently enacted American Rescue Plan Act ("ARPA"), Congress revised the FFCRA paid leave/tax credit program. From April 1, 2021 through September 30, 2021, Councils may voluntarily provide paid sick leave to their employees. It appears that Councils will also receive tax credits for FFCRA paid leave wages from April 1 through September 30, 2021. If the Council chooses to provide this leave, the Council cannot discriminate among employees who may receive the leave (part-time vs. full-time, highly compensated vs. minimum wage employee, etc.). Here are three key takeaways for employers providing FFCRA benefits:

1. ARPA "refills" the two-week (up to 80 hours) emergency paid sick leave entitlement for each eligible employee. Employees must have a qualifying COVID-19 reason.
2. Under ARPA, employees may receive up to 12 weeks of qualifying paid family leave per employee (with a qualifying COVID-19 reason).
3. It appears that ARPA allows public employers to claim tax credits for leave granted under ARPA.

TAX CREDITS

While no specific guidance has been released since ARPA was passed in March 2021 regarding the eligibility of local government employers to claim tax credits for providing voluntary paid sick leave, all indications are that local government entities and political subdivisions, like Councils, **will** be able to claim the tax credits. Wages that entitle an employer to payroll tax credits must be paid within a specified period of six months from April 1, 2021 through September 30, 2021.

ARPA changes the source of the tax credit beginning April 1, 2021, creating a new section of the Internal Revenue Code. The relevant section does not explicitly exclude state and local government employers from claiming the credit. At this point, all signs point to state and local government employers being able to recoup the cost of emergency paid leave using the new tax credits.

ARPA has expanded the qualifying reasons for paid leave (both sick leave and emergency family medical leave) under FFCRA; extended the length of paid leave available; and increased the maximum tax credit associated with the paid leave.

An employee may qualify for emergency paid sick leave and/or paid family leave for any of the following reasons, which include several new qualifying reasons (indicated in bold):

- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- The employee is caring for an individual who is subject to a qualifying quarantine or isolation order or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The employee is caring for his/her child(ren) whose school or place of care has been closed or childcare provider is unavailable, due to COVID-19 precautions;
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor;
- **The employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 where the employee has been exposed to COVID-19 or the employee's employer has requested such test or diagnosis;**
- **The employee is obtaining immunization related to COVID-19; or**
- **The employee is recovering from any injury, disability, illness, or condition related to the COVID-19 immunization.**

ARPA eliminates the requirement that the first 10 days of emergency family medical leave be unpaid. It also creates a new bank of up to 10 days per employee of qualifying paid sick leave that is available for tax credits for 2021, beginning on April 1, 2021. The amount of tax credit per employee has increased from \$10,000 to \$12,000 to reflect this change.

In order to be eligible for the FFCRA tax credits, the employer must not violate any of the FFCRA provisions, such as anti-retaliation provisions or violations of the nondiscrimination rules by administering FFCRA paid leave in a discriminatory fashion. If such violations occur, the employer will be disqualified from receiving a tax credit.

Since ARPA was recently enacted, the IRS has not yet updated all of its guidance and Frequently Asked Questions regarding FFCRA tax credits. The IRS continues to update its website resources and how-to guides, which you can find [here](https://www.irs.gov/newsroom/how-to-claim-the-credits): <https://www.irs.gov/newsroom/how-to-claim-the-credits>. To claim the tax credits, an employer needs to complete IRS Form 941, which you can find [here](https://www.irs.gov/pub/irs-pdf/f941.pdf): <https://www.irs.gov/pub/irs-pdf/f941.pdf>.

CONCLUSION

Although the IRS has not published new guidance yet, it appears that Councils may choose to offer FFCRA paid leave to employees and receive tax credits to help offset those costs.