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# Summary of the new payroll tax credits for local governments (prepared March 24, 2021)

**Previous State of Play: Families First Coronavirus Response Act (Eff. April 1, 2020)**
The Families First Coronavirus Response Act (FFCRA) granted employers a tax credit for qualified sick leave and family leave wages. The FFCRA expressly excluded states and local governments from this credit. FFCRA, Pub. L. 116-127 §§ 7001(e)(4), 7003(e)(4) ("This credit shall not apply to . . . the government of any State or political subdivision thereof . . . ."). The original credits available to nongovernmental (private) employers were set to expire in December 2020 but were extended to March 31, 2021.

**American Rescue Plan Act: Expanded Payroll Tax Credits and Local Government Eligibility (signed March 11, 2021)**
The American Rescue Plan Act (ARPA) expanded and extended the tax credit for qualified sick leave and family leave wages. It also lifted the exclusion of state and local governments from tax credits. *See* ARPA §9641(a) (amending Chapter 21 of Internal Revenue Code at §§ 3131(f)(5), 3132(f)(5)), *available at* https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf. A helpful summary is available here: Emergency-Paid-Leave-Tax-Credits-and-the-American-Rescue-Plan.pdf (abetterbalance.org).

The new tax credits are available through September 30, 2021. They are not retroactive for state and local governments—and are effective only for payments made after March 31, 2021. *See* American Rescue Plan Act of 2021 (ncsl.org). Since Jan. 1, 2020, the leave provisions have been **optional** rather than mandatory, and if public employers choose to provide expanded paid sick or family leave, they can now receive these tax credits for wages paid after March 31. Employers cannot receive the credit if they discriminate in favor of highly compensated employees, full-time employees, or employees on the basis of employment tenure. ARPA § 9641(a) (amending §§ 3131(j), 3132(j)).

For "extended" FFCRA, which is purely optional, many of the provisions are identical to the FFCRA effective April 1, 2020. There are some differences.
For paid family leave, the credit is capped at $200 per employee per day, up to a maximum of $12,000.
For paid sick leave, for (a) health, diagnosis, or vaccination ((1)-(3), below), the credit is 100% of the employee's rate of pay (or minimum wage, whichever is higher), up to $511 per day for up to 10 days, and for (b) caregiving needs, the credit is 67% of the regular rate of pay (or minimum wage, whichever is higher), up to $200 per day for up to 10 days.

Qualified leave is the same kind of leave that would have been mandated last year under the Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act, as if the original requirements continued to apply after March 31, 2021 (as the employer has the option of doing in 2021), with some additions. To qualify for the credit, employees must satisfy one of several qualifying reasons for their leave—these are the same as the FFCRA expanded leave requirements, with two *new* reasons:

1. 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 is seeking a medical diagnosis;
4. Is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. 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
6. Is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services.
7. (NEW) The employee is seeking or awaiting the results of a diagnostic test, or medical diagnosis of, COVID-19 and such employee has been exposed to COVID-19 or the employer has requested such test or diagnosis.
8. (NEW) The employee is obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to such immunization.

*See* ARPA § 9641(a) (amending §§ 3131(c)(2)(A)(i), 3132(c)(2)(A)(i)); *see also* Tax Credits for Voluntary Employer-Paid Sick and Family Leave Expanded and Extended through September 30th Under the American Rescue Plan Act of 2021 - Buelow Vetter.

Note that the family leave tax credit under the original form of FFCRA would only kick in after an employee had already been on leave for 10 days – this has been eliminated, making calculations a lot simpler. ARPA § 9641(a) (amending §3132(c)(2)(A)(ii)(II)).

Employers can also get a credit for certain costs to maintain health insurance coverage for the employee during that period, as well as certain amounts paid under collective bargaining agreements. *See* ARPA § 9641(a) (amending § 3132(d), (e)).

The IRS has not yet updated guidance for the expanded ARPA credit, but previous guidance under the FFCRA credit indicated that employers could claim the credit on their federal tax return, reduce employment tax deposits, or request an advance payment of credits. IRS updates FAQs on paid sick leave credit and family leave credit | Internal Revenue Service.

**How does the employer claim the credits?** The best guide is the updated version of IRS Form 941. As of March 2021, Form 941 provides a specific worksheet for calculating the credit. *See* Instructions for Form 941 (Rev. March 2021) (irs.gov) (Worksheet 1 on p. 20). The step-by-step process is identified in the form and accompanying worksheet.

Employers can also receive *advance* payment for the sick and family leave credits if they have not paid sufficient federal employment taxes to cover the amount of the credits. *See id.* at 1; *see also* IRS updates FAQs on paid sick leave credit and family leave credit | Internal Revenue Service. To receive the advance payment, employers submit Form 7200. Form 7200 (Rev. January 2021) (irs.gov).