

COVID-19

## AMERICAN RESCUE PLAN ACT EXPANDS FFCRA VOLUNTARY LEAVE TAX CREDIT PROGRAM

April 2, 2021

By: Tara Eberline and Nancy E. Musick

*Foulston has produced a series of issue alerts as we continue to monitor the evolving COVID-19 situation and provide additional guidance. Please find all updates and our latest resources available [here](#).*

The American Rescue Plan Act of 2021 (ARPA), signed into law on March 12, 2021, extends the Families First Coronavirus Response Act's (FFCRA) paid leave program for employees who must stay home to care for themselves or their families during the COVID-19 pandemic. Beginning April 1, 2021, eligible employers (generally private employers with fewer than 500 employees) may voluntarily choose to — but are not required to — extend and expand paid leave benefits under FFCRA and receive a corresponding tax credit.

Under ARPA, employers may offer employees up to 10 days (80 hours) of additional emergency paid sick leave (EPSL), plus up to 12 weeks of paid emergency family and medical leave (EFML), for qualified, COVID-related leave. In each case, this applies to leave taken between April 1, 2021, and Sept. 30, 2021.

As before, qualified employers who offer this paid leave can receive reimbursement for the cost of the leave through a credit against payroll taxes — specifically, the employer's share of Medicare taxes. Creditable costs continue to include the cost of the paid leave plus allocable health plan costs. Some new categories of creditable costs have also been added, which will be primarily relevant to collectively bargained employees (e.g., costs associated with apprenticeship plans).

The ARPA makes some important adjustments to the scope of EPSL and EFML, including:

### 1. PAID LEAVE HOURS RESET

The ARPA resets employees' 80-hour paid leave bank for emergency paid sick leave. Employees who have used some or all of their 80 hours of EPSL can receive an additional 80 hours, as of April 1, 2021.

### 2. EXPANDED LEAVE CATEGORIES FOR EPSL

# FOULSTON

ATTORNEYS AT LAW

The Act expands EPSL categories to include three new reasons for leave: (1) seeking or awaiting the results of a COVID test or diagnosis, if the employee has been exposed to COVID or the employer has requested such test or diagnosis, (2) obtaining the COVID vaccine, or (3) recovering from any injury, disability, illness, or condition related to the vaccine.

### 3. PAYMENT CAP FOR EPSL

Certain categories of EPSL (including the new categories) continue to be payable at 100% of pay, subject to a cap of \$511 per day. Caregiver leave remains limited to 2/3 pay, subject to a cap of \$200 per day.

### 4. EXPANDED LEAVE CATEGORIES FOR EFML

In addition to allowing time off to care for children who are out of school or daycare due to COVID, the Act also expands EFML to all the EPSL categories, including the three new categories. Now employees may request EPLA or EFML for the same reasons.

### 5. PAYMENT CAP FOR EFML

All types of EFML (including the expanded categories) continue to be limited to 2/3 pay, subject to a cap of \$200 per day. But the total cap on EFML has been increased to \$12,000 to account for the increased eligibility for 12 weeks of paid EFML leave (versus the prior max of 10 weeks of paid EFML).

### 6. NON-DISCRIMINATION MANDATE

To qualify for the tax credits, employers cannot have leave policies that favor highly compensated employees, full-time employees (over part-time employees), or longer-tenured employees.

### FOR MORE INFORMATION

If you have questions or want more information about the American Rescue Plan Act of 2021, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. Foulston's employment and labor lawyers maintain a high level of expertise regarding federal and state regulations affecting employers. At the same time, Foulston's other practice groups, including the taxation, general business, healthcare, and litigation groups enhance our ability to consider the legal ramifications of these situations. For more information, contact **Tara Eberline** at 913.253.2136 or [teberline@foulston.com](mailto:teberline@foulston.com) or **Nancy Musick** at 913.253.2140 or [nmusick@foulston.com](mailto:nmusick@foulston.com). For more information on the firm, please visit our website at [www.foulston.com](http://www.foulston.com).

Established in 1919, Foulston is the largest Kansas-based law firm. With offices in Wichita, Kansas City, and Topeka, Foulston provides a full range of legal services to clients in the areas of administrative & regulatory; antitrust & trade regulation; appellate law; banking & financial services; business & corporate; construction; creditors' rights & bankruptcy; e-commerce; education & public entity; elder law; emerging small business; employee benefits & ERISA; employment & labor; energy; environmental; ERISA litigation; estate planning & probate; family business enterprise; franchise & distribution; government investigations & white collar defense; governmental liability; government relations & public policy; healthcare; immigration; insurance regulatory; intellectual property; litigation & disputes; long-term care; mediation/dispute resolution; mergers & acquisitions; Native American law; oil, gas & minerals; OSHA; privacy & data security; private equity & venture capital; product liability; professional malpractice; real estate; securities & corporate finance; supply chain management; tax exempt organizations; taxation; trade secret & noncompete litigation; water rights; and wind & solar energy.

### RESOURCES

# FOULSTON

ATTORNEYS AT LAW

Sign up to receive these issue alerts straight to your inbox [here](#).

---

*This update has been prepared by Foulston Siefkin LLP for informational purposes only. It is not a legal opinion; it does not provide legal advice for any purpose; and it neither creates nor constitutes evidence of an attorney-client relationship.*

## PRACTICE AREAS

---

- Employment & Labor
- Employee Benefits & ERISA