

THE AMERICAN RESCUE PLAN **DOES NOT** REQUIRE EMPLOYERS TO PROVIDE PAID LEAVE

The Families First Coronavirus Response Act (“FFCRA”) required all employers with fewer than 500 employees to provide two types of paid leave. The Emergency Paid Sick Leave Act (“EPSLA”) required employers to provide up to 10 days of paid for designated pandemic-related circumstances. The Emergency Family Medical Leave Expansion Act required employers to provide up to 10 weeks of paid family medical leave to employees under more restricted circumstances. Employers received tax credits for payments made under these acts. An employer’s mandatory obligation to provide emergency paid sick leave and emergency family and medical leave expired on December 31, 2020.

Under legislation passed on December 27, 2020, an employer could voluntarily provide Emergency Paid Sick Leave and/or paid leave under the Family Medical Leave Expansion Act through March 31, 2021, and receive the corresponding FFCRA tax credit. The amount of paid leave did not increase. If an employee used his or her allotment in 2020, the employer is not required to give the employee more.

On March 11, 2021, President Biden signed the American Rescue Plan of 2021. The American Rescue Plan gives employers *the option* to offer additional paid leave to their employees. The law *does not require* an employer to provide leave. It provides tax credits to employers who choose to provide such leave. Employers can receive a 100 percent tax credit for up to 10 days of paid sick leave (regular rate of pay capped at \$200 per day). Employers can also receive a 100 percent tax credit for up to 12 weeks of emergency paid family leave (2/3 regular rate of pay capped at \$200 per day and \$12,000 in the aggregate).¹

The American Rescue Plan also expanded the qualifying circumstances. It added three additional qualifying events for emergency paid sick leave.

1. When an employee is seeking or awaiting the results of a test for or a diagnosis of COVID-19, or the employer (as opposed to a physician or CDC guidelines) has requested the test or diagnosis as a condition for returning or continuing to work.
2. When an employee is obtaining the COVID-19 vaccine; and

¹ For employers electing to provide emergency paid family medical leave, the first two weeks are no longer unpaid, allowing employees to qualify for paid leave for all 12 weeks of emergency family medical leave.

3. When an employee is recovering from any injury, disability, illness or condition related to immunization.

The Plan expands the qualifying reasons for paid emergency family medical leave. Under FFCRA, employers were only required to provide paid leave if an employee was unable to work (or telework) due to a need to care for a son or daughter because the school or place of care has been closed, or on an alternating attendance schedule, or the child care provider of a son or daughter was unavailable. Under the American Rescue Plan, an employee may take paid emergency family medical leave for all of the reasons an employee may take paid emergency sick leave. The employer also must pay for all twelve weeks of emergency family medical leave (as opposed to the 10 weeks of paid leave required by FFCRA).

If an employer elects to provide additional leave under the American Rescue Plan, an employee is not entitled to take paid time off if the employee is able to work remotely.

In sum, the American Rescue Plan is voluntary. If an employer elects to provide additional leave, the amounts of leave “re-load” to 10 days of emergency paid sick leave and 12 weeks of paid emergency family medical leave. The amounts of available paid leave are not reduced based on an employee’s usage of leave under FFCRA. The reasons an employee may take paid leave have expanded.

With the program being voluntary, participation is not a legal issue; it is an economic one. The tax credit eliminates direct financial costs. However, employers must consider the other costs – lost production (unplanned absences and combined American Rescue Plan leave and employer’s existing leave plan entitlements), cost of establishing or maintaining remote working, increased administrative payroll, accounting and human resources costs, and the potential for abuse. Employers faced these costs in 2020, and continuing them from April 1, 2021 to September 31, 2021 may not result in new costs. That is for you to decide.

If you have any questions regarding The American Rescue Plan, and how it may affect your company, please contact our COVID-19 Response Team. www.christiansmall.com

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