



# Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Determining the Amount of the Tax Credit for Qualified Sick 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.

## 25. What is included in "qualified sick leave wages"? (updated July 29, 2021)

Qualified sick 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 of the Code, determined without regard to the exclusions from compensation under section 3231(1) of the Code) that Eligible Employers pay with respect to leave taken by an employee for reasons provided under section 5102(a) of the EPSLA, as amended for purposes of the ARP during which the employee is unable to work (including telework) 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.

## **26. Do "qualified sick leave wages" include taxes imposed on or withheld from the wages? (added June 11, 2021)**

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

Note: Under sections 3131 and 3133 of the Code, as added by the ARP, qualified sick 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 sick leave wages is increased by the employer's share of social security and Medicare taxes imposed on the qualified sick leave wages. Qualified sick 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 sick 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](#).

## **27. Do "qualified sick leave wages" include wages paid for leave taken for COVID-19 testing, to receive a vaccination or to recover from vaccination? (added June 11, 2021)**

Yes. The ARP expanded the reasons for Eligible Employers to pay qualified sick leave wages under the EPSLA to include wages paid with respect to leave taken by employees beginning 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.

## **27a. Do "qualified sick 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 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. 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.

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.

## **28. What is the amount of the credit an Eligible Employer may receive for qualified sick leave wages that it pays? (added June 11, 2021)**

An Eligible Employer may claim a fully refundable tax credit equal to 100 percent of the qualified sick 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 sick leave wages) it pays. The maximum amount of qualified sick leave wages (including certain collectively bargained contributions) paid for purposes of the credit is up to \$511 per day and \$5,110 in the aggregate for reasons related to the employee's own health needs and up to \$200 per day and \$2,000 in the aggregate for reasons related to the employee's need to care for others.

For more information about how to determine the amount of qualified sick leave wages for which an Eligible Employer may receive credit, see "How does an Eligible Employer determine the amount of qualified sick leave wages it pays under the EPSLA, as amended for purposes of the ARP?", "[What is the rate of pay for qualified sick leave wages if an employee is unable to work due to the employee's own health needs and the maximum amount of qualified sick leave wages that may be taken into account?](#)," and "[What is the rate of pay for qualified sick leave wages if an employee is unable to work because the employee needs to care for others?](#)"

## **29. How does an Eligible Employer determine the amount of qualified sick leave wages it pays under the EPSLA, as amended for purposes of the ARP? (added June 11, 2021)**

The amount of qualified sick leave wages for which an Eligible Employer may claim the credit varies depending on the reason for which the employee is unable to work, the duration of the employee's absence, the employee's hours, and the employee's regular rate of pay (or, if higher, the federal minimum wage or any applicable State or local minimum wage).

For more information see "What is the rate of pay for qualified sick leave wages if an employee is unable to work due to the employee's own health needs and the maximum amount of qualified sick leave wages that may be taken into account?" as well as "[What is the rate of pay for qualified sick leave wages if an employee is unable to work because the employee needs to care for others?](#)"

### **30. What is the rate of pay for qualified sick leave wages if an employee is unable to work due to the employee's own health needs and the maximum amount of qualified sick leave wages that may be taken into account? (added June 11, 2021)**

If an 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; or
- 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,

to be able to claim the credit, the Eligible Employer pays qualified sick leave wages for up to two weeks (up to 80 hours) at a rate for each hour of the greatest of the following:

- the employee's regular rate of pay (as determined under section 7€ of the FLSA);
- the minimum wage rate in effect under section 6(a)(1) of the FLSA; or
- the minimum wage rate in effect for the employee in the applicable State or locality, whichever is greater, in which the employee is employed.

The maximum amount of qualified sick leave wages paid for these reasons is up to \$511 per day and \$5,110 in the aggregate.

### **31. What is the rate of pay for qualified sick leave wages if an employee is unable to work because the employee needs to care for others? (updated July 29, 2021)**

If an employee is unable to work because 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;

- caring for a child of the employee if the school or place of care of the child has been closed, or the child care provider of the child is unavailable due to COVID-19 precautions; or
- 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, including if the employee is accompanying an individual to obtain immunization related to COVID-19, or is caring for an individual who is recovering from any injury, disability, illness, or condition related to the immunization,

to be able to claim the credit, the Eligible Employer pays qualified sick leave wages for up to two weeks (up to 80 hours) at a rate for each hour of 2/3 of the greatest of the following:

- the employee's regular rate of pay (as determined under section 7(e) of the FLSA);
- the minimum wage rate in effect under section 6(a)(1) of the FLSA; or
- the minimum wage rate in effect for the employee in the applicable State or locality, whichever is greater, in which the employee is employed.

The maximum amount of qualified sick leave wages paid due to the need to care for others as described above for these reasons is up to \$200 per day and \$2,000 in the aggregate.

## **32. How are employees' hours determined for purposes of the paid sick leave requirements? (added June 11, 2021)**

Full-time employees can receive up to 80 hours of paid sick leave with respect to leave taken beginning on April 1, 2021, through September 30, 2021, for which an Eligible Employer may claim a credit. Part-time employees can receive the number of hours of paid sick leave that the employee works, on average, in a two-week period for leave taken beginning on April 1, 2021 through September 30, 2021.

DOL guidance under the FFCRA provided rules for determinations of full-time or part-time status and calculating leave for part-time employees.

For the purposes of paid sick leave, a full-time employee is an employee who is normally scheduled to work 40 or more hours per week; a part-time employee is an employee who is normally scheduled to work fewer than 40 hours per week.

Generally, the employer calculates hours of leave for a part-time employee based on the number of hours the employee is normally scheduled to work. If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, the employer may use a six-month average to calculate the average daily hours. The part-time employee may take paid sick leave for this number of hours per day for up to a two-week period.

If this calculation cannot be made because the part-time employee has not been employed for at least six months, the employer uses the number of hours that the employer and the employee agreed that the employee would work upon hiring. And if there is no agreement, the employer may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of the employee's employment.

These standards continue to apply for purposes of the ARP.

The 80 hours of paid sick leave for which an Eligible Employer may claim a tax credit under section 3131 of the Code is determined without regard to any qualified sick leave wages which 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 sick leave for which an Eligible Employer could claim tax credits for qualified leave wages paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021; unused paid sick 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 sick leave for which an Eligible Employer may claim tax credits under the ARP, and paid sick 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 sick leave for which an Eligible Employer may claim tax credits under the ARP.

### **33. Are amounts other than qualified sick leave wages included in the tax credit for paid sick leave? (added June 11, 2021)**

Yes. The tax credit for paid sick leave under section 3131 of the Code is increased by the amount of allocable qualified plan health expenses, certain collectively bargained contributions, and the employer's share of social security tax and Medicare tax imposed on the qualified sick leave wages.

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 Amounts Paid Under Certain Collectively Bargained Agreements](#)," respectively.

### **34. Are amounts other than qualified sick 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 sick leave wages in applying the maximum daily and aggregate limits. That is, the maximum amount of qualified sick leave wages and certain collectively bargained contributions for which an Eligible Employer may claim the tax credit is \$511 per day or \$5,110 in the aggregate (or \$200 per day or \$2,000 in the aggregate, depending on the reason for which the Eligible Employer provided the leave). In contrast, the allocable qualified health plan expenses and the employer's share of social security and Medicare taxes imposed on the qualified sick leave wages are not included for the purposes of the maximum daily or aggregate limits.

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

Yes. Section 9642 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 sick leave that would have satisfied the requirements of the EPSLA, 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, see "[Specific Provisions Related to Self-Employed Individuals](#)."

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