New Federal Stimulus Legislation Extends FFCRA Tax Credits Through September 30, 2021

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The American Rescue Plan Act of 2021 (ARPA), which was signed into law on March 11, 2021, does not require employers to offer paid sick and family leave related to COVID-19. But ARPA continues to allow certain employers to receive refundable tax credits for ***voluntarily*** offering paid sick and family leave related to COVID-19. In summary:

- **No Mandate:** Private and public employers are not required to offer Emergency Paid Sick Leave (EPSL) or paid leave under the Family and Medical Leave Expansion Act (EFML) related to COVID-19.
- **Covered Employers:** Private employers with less than 500 employees may continue to claim the refundable tax credits for offering paid EPSL and EFML. The prior statutory language specifically excluding state and local governments from claiming the refundable tax credit for paid EPSL and EFML was removed in ARPA, which would suggest that the credit is now available to such entities, but we are awaiting clarification from the IRS, as this would be a significant change from the prior FFCRA tax credit rules. Notably, while the employee retention tax credit for certain private employers was extended in ARPA, the language excluding State and local government from claiming employee retention tax credit remains in place. (Updated 3/17/21)
- **Time Period:** The tax credits under ARPA may be claimed for qualifying EPSL and EFML paid between April 1, 2021 to September 30, 2021.
- **Reset of Bank of Tax Creditable Days:** Employers may claim the tax credit for up to 10 new days of EPSL and/or 12 weeks of EFMLA taken

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after April 1, 2021 per employee, even if the employee used and exhausted the EPSL and EFMLA previously available.

- **Qualifying EPSL & EFML:** ARPA expands upon the previously qualifying absences to include leave because (a) the employee is being vaccinated and/or recovering from vaccine side effects, or (b) the employee awaiting the results of a COVID-19 test or diagnosis after having close contact with a person with COVID-19 or at the employer's request. That means that leaves paid for the following reasons qualify for the tax credits:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to COVID-19 concerns;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis, the employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of COVID–19, and such employee has been exposed to COVID–19 or the employee's employer has requested such test or diagnosis, or the employee is obtaining immunization related to COVID–19 or recovering from any injury, disability, illness, or condition related to such immunization;
4. The employee is caring for an individual who is subject to government quarantine or isolation order or has been advised by a health care provider to self-quarantine as described above; and
5. The employee is caring for a child because the child's school or place of care has been closed, or the childcare provider of such child is unavailable, due to COVID19 precautions.

- **Non-Discrimination Requirement:** Employers cannot receive tax credits if paid leave is offered in a manner that favors highly compensated employees, full-time employees, or employees on the basis of tenure. In other words, in order to receive the tax credit, paid leave must be offered to all employees, whether full-time or part-time, hourly or salaried, newly hired or more senior, or highly compensated or receiving minimum wage.
- **Wages Counted Towards Tax Credits:** Tax credits may be claimed for up to $511 per day for reasons (1), (2) and (3) above up and for up to $200 per day for paid leave for reasons (4) and (5) above. Tax credits are limited to $12,000 in the aggregate for paid leave for reason (5) (EFML) (increased from the prior $10,000 cap), and the two-week waiting period to receive paid EFML no longer applies. The amount of the credit allowed increases by the portion of the employer's qualified health plan expenses that are properly allocable to the qualify paid wages, as well as amounts paid for contributions to defined benefit pension plans and apprenticeship programs required under collective bargaining agreements. Notably,

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any text credit claimed for paid leave between April 1, 2021, and September 30, 2021, will offset an employer's share of Medicare taxes, as opposed to the offsetting Social Security taxes with paid leave under FFCRA. (Updated 3/17/21)

- **Coordination With Other Programs:** Tax credits may not be claims for payroll costs covered by loans or grants under certain provisions of the Small Business Act, the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, or the restaurant revitalization grant under ARPA. However, tax credits may be claimed for payroll costs for qualifying paid leave where PPP loans were not forgiven (subject to guidance and regulations to be issued later).