

LABOR AND EMPLOYMENT LAW INFORMATION MEMO

APRIL 28, 2021

Updated Guidance Regarding Tax Credits Under the American Rescue Plan

Under the American Rescue Plan (ARP), certain private-sector and governmental employers may claim [refundable tax credits](#) which provide reimbursement for the cost of providing Families First Coronavirus Response Act (FFCRA) style paid sick and family leave to employees, including leave for COVID-19 vaccination related reasons. The ARP does not *require* employers to provide paid leave; however, it provides tax credits for employers that *voluntarily* opt to do so. The tax credits are available to eligible employers who provide leave from April 1, 2021 through Sept. 30, 2021.

Any business, including tax-exempt organizations, with fewer than 500 employees are eligible employers for ARP tax credit purposes. Recent guidance from the Internal Revenue Service (IRS) clarifies that certain governmental employers are also eligible employers under the ARP. While state and local governments may be eligible for the tax credits, the federal government and federal agencies or instrumentalities of the federal government (except those organized pursuant to § 501(c)(1) of the Internal Revenue Code) are not. Individuals who are self-employed are eligible for similar tax credits.

The ARP allows eligible employers to claim tax credits for paid leave provided to employees who are unable to work or telework because of COVID-19 related reasons. This includes leave taken to receive COVID-19 vaccinations and leave taken to recover from any injury, disability or illness related to vaccination.

The updated IRS guidance makes it clear that the tax credits, which are counted against the employer's share of the Medicare tax, are refundable. For paid sick leave wages, the tax credit is equal to the amount of COVID-19 related sick leave wages paid at 100% of an employee's regular rate of pay (up to \$511 per day and \$5,110 in total). For paid family leave wages, the tax credit is equal to COVID-19 related family leave wages paid for up to 12 weeks at two-thirds of an employee's regular rate of pay (up to \$200 per day and \$12,000 in total).

To claim the ARP tax credits, eligible employers should report the total amount of paid sick and family leave wages they provided on their federal tax return for each quarter (typically a Form 941). The IRS has explained that eligible employers may retain the federal employment taxes that they otherwise would have deposited with the IRS in anticipation of claiming ARP tax credits. Eligible employers that do not have sufficient funds set aside to cover amounts paid as COVID-19 related paid sick and family leave, may request an advance by filing a Form 7200, Advance Payment of Employer Credits Due to COVID-19, with the IRS.

Employers are encouraged to consult with their tax attorney or other tax professional for further information or limitations on eligibility, reporting, and claiming tax credits on their quarterly tax filing.

If you have any questions about the information presented in this memo, please contact [Hannah K. Redmond](#), any [attorney](#) in Bond's [Labor and Employment practice](#) or the Bond attorney with whom you are in regular contact.



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