

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

AUGUST 9, 2021

IRS Updates American Rescue Plan Act Guidance

On July 29, 2021, the Internal Revenue Service (IRS) updated its [Tax Credits for Paid Leave Under the American Rescue Plan Act \(ARPA\) of 2021 Guidance](#) (the Guidance). As a reminder, private sector employers with fewer than 500 employees could voluntarily elect to extend ARPA benefits to their employees through Sept. 30, 2021, and in exchange, receive a federal tax credit.

Under the ARPA, employees may take up to 80 hours of Emergency Paid Sick Leave (EPSL) and up to 12 weeks of paid Expanded Family and Medical Leave (EFML) for qualifying COVID-19-related reasons. Both types of leave can be taken for the same set of reasons, which are as follows: (1) the employee is under 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; (2) the employee has COVID-19 symptoms and is seeking a medical diagnosis, 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; (3) the employee is obtaining the COVID-19 vaccine, or recovering from conditions related to obtaining the COVID-19 vaccine; (4) 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; (5) the employee is caring for a child whose school or place of care is closed or childcare provider is unavailable due to COVID-19 precautions, or (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

The updated Guidance contains, for the first time, an expansion of reason (6), and finds that a "substantially similar condition" includes when the "employee is accompanying an individual to obtain the COVID-19 vaccine or caring for an individual who is recovering from conditions related to obtaining the COVID-19 vaccine." The Guidance further defines "individual" for purposes of (6) to mean "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." Moreover, "for this purpose, "individual" does not include persons with whom the employee has no personal relationship.

Under the current Guidance, employers who have elected to extend the ARPA must allow their employees to take either EPSL or EFMLA to accompany another individual to obtain the COVID-19 vaccine, or to care for an individual recovering from vaccine side effects. This is a significant expansion of eligibility for leave, and employers to whom this applies should ensure that they are now allowing qualifying employees to use leave for these additional reasons. If employers have distributed EPSL or EFMLA policies, those should similarly be updated.

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

