



# TaxNewsFlash

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## IRS updates FAQs on paid leave credits available for employers; leave provided to employees with regard to vaccinations (COVID-19)

The IRS today updated a set of [frequently asked questions \(FAQs\)](#) concerning the paid sick and family leave tax credits under the “American Rescue Plan Act of 2021” (Pub. L. No. 117-2).

The available tax credits equal the wages paid for providing paid time-off to employees to take a family or household member or certain other individuals to get vaccinated, or to care for a family or household member or certain other individuals recovering from the vaccination. Comparable tax credits are also available for self-employed individuals.

As explained in a related IRS release—[IR-2021-160](#) (July 29, 2021)—the updated FAQs clarify that eligible employers can claim credits for providing leave to employees to accompany a family or household member (or certain other individuals) to obtain immunization relating to the coronavirus (COVID-19) or to care for a family or household member or certain other individuals recovering from the immunization.

- The paid sick and family leave credits can reimburse eligible employers for the cost of providing paid sick and family leave for reasons related to COVID-19.
- The revised FAQs clarify this includes leave taken by employees to care for certain individuals to obtain immunization relating to COVID-19 or to recover from immunization relating to COVID-19.
- This new reason for paid sick or family leave also applies for the comparable credits for self-employed individuals.

The FAQs provide information on how eligible employers can claim the paid sick and family leave credits—including how to file for and compute the applicable credit amounts, and how to receive advance payments for and refunds of the credits.

Under the American Rescue Plan Act of 2021, eligible employers—including businesses and tax-exempt organizations with fewer than 500 employees and certain governmental employers—may

claim tax credits for qualified leave wages and certain other wage-related expenses (such as health plan expenses and certain collectively bargained benefits).

Self-employed individuals may claim comparable credits on the Form 1040, *U.S. Individual Income Tax Return*.

### **Text of the updated FAQs (July 29, 2021)**

#### **8. What are "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(e) of the Code, determined without regard to the exclusions from compensation under section 3231(e)(1) of the Code) that an Eligible Employer pays that would have satisfied the requirements of the EPSLA, as amended for purposes of the ARP, to an employee who is unable to work because of:*

- *The following reasons under section 5102(a) of the EPSLA, as amended for purposes of the ARP, related to the employee's personal health status:*
  - *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,*
  - *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, or*
  - *the employee is obtaining the COVID-19 vaccine, or recovering from conditions related to obtaining the COVID-19 vaccine);*
- *Or the following reasons under section 5102(a) of the EPSLA, as amended for purposes of the ARP, related to the employee's need to care for others:*
  - *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,*
  - *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*
  - *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.*

For more information, see ["What is included in "qualified sick leave wages"?"](#)

#### **9. What are "qualified family leave wages"? (updated July 29, 2021)**

*Qualified family 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(e) of the Code, determined without regard to the exclusions from compensation under section 3231(e)(1) of the Code) that an Eligible Employer pays that would have satisfied the requirements of the Expanded FMLA, as amended for purposes of the ARP, to an employee who is unable to work because of:*

- *The following reasons related to the employee's personal health status:*

- 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,
- 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, or
- the employee is obtaining the COVID-19 vaccine or recovering from conditions related to obtaining the COVID-19 vaccine;
- Or the following reasons related to the employee's need to care for others:
  - 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, or
  - 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
  - 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.

For more information, see ["What is included in "qualified family leave wages"?"](#)

## **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.

**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.

**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.

**36. What is included in "qualified family leave wages"? (updated July 29, 2021)**

Qualified family 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(e) of the Code, determined without regard to the exclusions from compensation under section 3231(e)(1) of the Code) that Eligible Employers pay with respect to leave taken by an employee during which the 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;
- 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.

The Eligible Employer may provide the employee with qualified family leave wages for up to 12 weeks.

**38. Do qualified family leave wages include wages paid for leave taken for COVID-19 testing, to receive a vaccination or to recover from vaccination? (updated July 29, 2021)**

Yes. The ARP further expanded the Expanded FMLA reasons for employers to pay qualified family leave wages to include all of the reasons under the EPSLA section 5102(a), as amended by the ARP, including for COVID-19 testing, to receive vaccination or to recover from vaccination. That is, qualified family leave wages include wages paid with respect to leave taken by employees beginning on 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. Qualified family leave wages also include wages paid to an employee who 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, or has COVID-19 symptoms and is seeking a medical diagnosis, or 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, or for a child whose school or place of care is closed or child care provider is unavailable due to COVID-19 precautions.

Although the reasons for Eligible Employers to pay employees the qualified family leave wages are the same as for the qualified sick leave wages, the wages cannot be for the same hours for purposes of claiming the credits.

**38a. Do "qualified family 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 the ARP, all of the reasons for which qualified sick leave wages may be paid are also reasons for which qualified family leave wages may be paid. Furthermore, 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. Thus, because 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, an Eligible Employer may also pay qualified family leave wages for these reasons.

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.

Although the reasons for Eligible Employers to pay employees the qualified family leave wages are the same as for the qualified sick leave wages, the wages cannot be for the same hours for purposes of claiming the credits.

**108. How is the "qualified sick leave equivalent amount" for an eligible self-employed individual calculated? (updated July 29, 2021)**

For an eligible self-employed individual who is unable to work because the individual:

- 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 individual has been exposed to COVID-19 or is unable to work pending the results of the test or diagnosis, or
  - obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to the immunization,

the qualified sick leave equivalent amount is equal to the number of days during the taxable year that the individual cannot perform services in any trade or business for one of the three above reasons, multiplied by the lesser of \$511 or 100 percent of the "average daily self-employment income" of the individual for the taxable year, or the prior taxable year.

*For an eligible self-employed individual who is unable to work because the individual 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 if the child's school or place of care has been closed, or child care provider is unavailable due to COVID-19 precautions; or*
- *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.*

*the qualified sick leave equivalent amount is equal to the number of days during the taxable year that the individual cannot perform services in any trade or business for one of the three above reasons, multiplied by the lesser of \$200 or 67 percent of the "average daily self-employment income" of the individual for the taxable year, or the prior taxable year.*

*In either case, the maximum number of days a self-employed individual may take into account in determining the qualified sick leave equivalent amount is ten.*

*Note: The only days that may be taken into account in a taxable year in determining the qualified sick leave equivalent amount for the year are days occurring during the year and during the period beginning on April 1, 2021, through September 30, 2021.*

## **Background**

Today's IRS release—[IR-2021-160](#)—explains that the paid sick and family leave tax credits under the America Rescue Plan Act are similar to those enacted under the "Families First Coronavirus Response Act" (FFCRA), as amended and extended by the COVID-related "Tax Relief Act of 2020," under which certain employers could receive tax credits for providing paid sick or family leave that met the requirements of the "Emergency Paid Sick Leave Act" and the "Emergency Family and Medical Leave Expansion Act" (as added by FFCRA). The tax credits under the FFCRA, as amended and extended by the Tax Relief Act, covered leave taken beginning April 1, 2020, through March 31, 2021.

The American Rescue Plan Act amends and extends these credits to leave taken beginning April 1, 2021, through September 30, 2021.

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