

What Does the \$1.9 Trillion American Rescue Plan Mean for Employers?

WRITTEN BY

[Richard Gerakitis](#) | [Emily E. Schifter](#) | [Susan K. Lessack](#) | [Lee E. Tankle](#)

Who Needs to Know

All employers covered by the FFCRA (including those who want to receive tax credits for providing paid leave to employees getting the COVID-19 vaccine), employers attempting to recall or hire employees currently receiving unemployment benefits and possibly eligible for extended benefits, and employers who may conduct future furloughs, layoffs, or job eliminations.

Why It Matters

In the absence of the American Rescue Plan, enhanced unemployment compensation benefits for unemployed workers would have expired on March 14, with FFCRA benefits expiring on March 31. Enhanced unemployment compensation benefits and expanded eligibility for FFCRA leave now will extend through September 2021, allowing employees of employers choosing to provide FFCRA leave a new bank of leave on April 1. In any event, the American Rescue Plan does not require any employer to offer paid sick or family leave.

On March 11, nearly a year after the enactment of the [Families First Coronavirus Response Act \(FFCRA\)](#) and [CARES Act](#), and three months after the enactment of the [Consolidated Appropriations Act of 2021](#), President Biden signed a sweeping \$1.9 trillion stimulus package called the [American Rescue Plan](#). The headline-grabbing elements of the American Rescue Plan include \$1,400 direct payments to individuals earning below a certain income threshold, \$160 billion for COVID-19 vaccine and testing programs, and \$360 billion for aid to state, local, and territorial governments. Critical to employers, the American Rescue Plan once again extends federal unemployment insurance benefits and modifies employee entitlement to COVID-19-related leave under the FFCRA.

FFCRA Leave Still Voluntary and Available for Vaccines

The FFCRA required employers with fewer than 500 employees to provide partially paid COVID-19 leave to employees under the Emergency Family and Medical Leave Act (EFMLEA) and Emergency Paid Sick Leave Act (EPSLA) through December 31, 2020. Employers providing EFMLEA and EPSLA leave received a 100% tax credit for all qualified wages paid to employees under these laws. Effective January 1, 2021, FFCRA provisions became purely voluntary; however, employers could still receive a 100% tax credit for qualified wages paid during leave provided through March 31.

Under the American Rescue Plan, and effective April 1, employers with fewer than 500 employees can start or continue to voluntarily provide leave under the EFMLEA and EPSLA. Employers choosing to do so:

- Can receive a 100% tax credit for up to 10 days of paid sick leave, up to \$200 or \$511 per day (depending on the reason for leave). All employees can take these 10 days of leave beginning on April 1 — even if they already used their first bank of 10 emergency paid sick leave days. It is unclear whether employees may take more than 10 emergency paid sick leave days if they did not use all of their emergency paid sick leave before March 31.
- Can receive a 100% tax credit (of up to \$511 per day) for new types of emergency paid sick leave including: (1) leave where an employee seeks or awaits the results of a COVID-19 test after being exposed to COVID-19 or asked to get a COVID-19 test by their employer; (2) leave for an employee to obtain a COVID-19 vaccine; and (3) leave for an employee to recover from any injury, disability, illness, or condition related to getting a COVID-19 vaccine.
- Can receive a 100% tax credit (of up to \$200 per day and \$12,000 in the aggregate) for emergency family leave. The scope of emergency family leave has been expanded from the original FFCRA (when it applied only to employees unable to work or telework due to a need for leave to care for a minor child if the child's school or place of care was closed or the child's childcare provider was unavailable due to COVID-19) to include *all* of the reasons an employee can take emergency paid sick leave. Further, under the original FFCRA, the first two weeks of emergency family leave were unpaid. This "unpaid" requirement has been removed and now all 12 weeks of emergency family leave can be paid. But remember, emergency family leave is *not* in addition to the 12 weeks of FMLA leave to which an employee would otherwise be entitled. If an employee has utilized all or some of their EFMLEA or FMLA leave for other purposes, they will not be entitled to additional emergency family leave after exhausting the 12-week entitlement.
- Cannot limit the grant of emergency paid sick leave or family leave to highly compensated employees, full-time employees, or employees with a certain amount of tenure. This means that if an employer chooses to offer additional emergency paid sick or family leave, it must offer the leave to *all* employees — including part-time employees and newly hired employees.

The 100% tax credit available under the American Rescue Plan expires on September 30, 2021. As such, employers need to decide if they will start or continue to provide paid sick and paid family leave in exchange for government-offered tax credits. If employers plan to start or continue such leave, they will need to update their FFCRA leave forms and relevant policies and consult with counsel to ensure they take the proper steps to document leave in order to claim tax credits. Stay tuned for more guidance/regulations from the Department of Labor and/or Internal Revenue Service on the implementation of these new sick leave and family leave laws.

Federal Unemployment Assistance Extended — Again

The American Rescue Plan extends three popular CARES Act unemployment compensation programs through weeks of unemployment ending September 6, 2021, among various other changes:

- **Unemployed Will Continue to Receive a \$300 Weekly Supplement.** The American Rescue Plan extends the popular Federal Pandemic Unemployment Compensation (FPUC) benefit. Individuals receiving at least \$1 in weekly underlying state unemployment compensation benefits will be eligible for a \$300 weekly federal supplement through weeks of unemployment ending September 6. An earlier version of the law sought to increase the stipend to \$400 per week, but the version that passed the House and was signed by the president retained the \$300 supplement.

- **Pandemic Unemployment Assistance Continued.** The American Rescue Plan further extends the Pandemic Unemployment Assistance (PUA) program under Section 2102 of the CARES Act, which provides unemployment insurance benefits for individuals, such as independent contractors and gig workers who typically do not qualify for unemployment compensation benefits. The PUA program was extended for weeks of unemployment ending September 6, and the maximum duration for receipt of PUA benefits has now been extended from 50 to 79 weeks (a possible total of 86 weeks of eligibility).
- **Extended Pandemic Emergency Unemployment Compensation.** The Pandemic Emergency Unemployment Compensation (PEUC) benefits established under Section 2107 of the CARES Act provided for an additional 13 weeks of state benefits after an individual exhausted all regular state benefits. The American Rescue Plan now extends this program to allow a total of up to 53 weeks of state benefits after individuals exhaust their regular state benefits, through weeks of unemployment ending September 6.
- **Some Unemployment Benefits Non-Taxable.** In a development that will bring relief to many employees who received benefits in 2020, the American Rescue Plan makes the first \$10,200 in state or federal unemployment compensation received in 2020 nontaxable for households with incomes under \$150,000.
- **Other Changes.** The act contains other unemployment compensation-related provisions, including extending federal funding for short-time compensation programs (popularly known as “workshare” programs) and, if states choose to waive the waiting week, providing 100% funding for a state’s first week of unemployment benefits during the typically unpaid one-week “waiting period” before benefits begin under most state laws.

With the threat of COVID-19 continuing worldwide, the [advent of safe and effective vaccines](#) presents new challenges and opportunities for American employers. On a daily basis, [Troutman Pepper’s labor and employment attorneys](#) work with employers facing the innumerable human resources challenges caused by the pandemic, bringing tailored guidance and solutions.

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