

# COMPLIANCE

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## IRS Guidance on Tax Credits for Employee Leave Under the FFCRA

[The Families First Coronavirus Response Act](#) (FFCRA), passed in March 2020, required small and mid-sized employers to provide paid employee leave for specific COVID-19-related reasons through Dec. 31, 2020. The FFCRA also provided tax credits for employers to cover the cost of the leave.

The FFCRA employee leave requirements expired in December 2020; however, subsequent legislation extended the tax credits for employers that continued to offer FFCRA leave on a voluntary basis. The credits are currently in effect through Sept. 30, 2021. They are taken against employment taxes and are fully refundable and advanceable.

The IRS has maintained guidance on the tax credits, including answers to frequently asked questions (FAQs), a fact sheet and a snapshot document. Note that the IRS FAQs have not been updated since the American Rescue Plan Act (ARPA) amended the tax credit provisions in March 2021.

### LINKS AND RESOURCES

- IRS [FAQs](#) on COVID-19-related tax credits for paid leave provided by small and mid-sized businesses (the FAQs do not currently reflect changes made by the American Rescue Plan Act)
- IRS [fact sheet](#) about tax credits for paid employee leave under the FFCRA
- IRS [snapshot](#) document about tax credits for FFCRA leave

### IRS FAQ Topics

- Eligible employers
- Qualified sick leave wages
- Qualified family leave wages
- Qualified health plan expenses
- How to claim the credits
- Periods during which credits apply
- Substantiating eligibility
- Deductibility of tax credits
- Interaction of tax credits
- Third-party payers
- Self-employed individuals

### Important Dates

#### March 18, 2020

Families First Coronavirus Response Act passed, providing employer tax credits for required paid employee leave.

#### Dec. 27, 2020

Consolidated Appropriations Act, 2021, extended the tax credits through March 2021.

#### March 11, 2021

American Rescue Plan Act extended the credits through September 2021.

## Employee Leave Under the Families First Coronavirus Response Act

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The FFCRA, enacted March 18, 2020, required employers with fewer than 500 employees to provide 80 hours of emergency paid sick leave and 10 weeks of expanded paid family leave for specified COVID-19-related reasons. These leave requirements expired Dec. 31, 2020.

## The Employer Tax Credits

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The FFCRA allowed employers to take a credit against payroll taxes to cover the following costs of the leave:

- Qualified sick leave wages;
- Qualified family leave wages;
- Qualified health plan expenses allocable to employee leave wages; and
- The employer's portion of Medicare tax related to the qualified wages.

Employers with fewer than 500 employees are eligible for the credit, with the exception of federal government employers and any agency or instrumentality of the federal government that is **not** a 501(c)(3) organization.

## Extension and Amendment of the Employer Tax Credits

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After the FFCRA leave provisions expired at the end of December 2020, the [Consolidated Appropriations Act, 2021](#) extended the tax credits through March 31, 2021, for employers that continued to offer FFCRA leave voluntarily. The ARPA, passed in March 2021, extended the credits again, this time through Sept. 30, 2021. The [ARPA](#) also expanded the FFCRA family leave tax credit, allowing it to apply to:

- Family leave taken for FFCRA **emergency paid sick leave** reasons
- Family leave taken for reasons related to COVID-19 testing and vaccination

The ARPA additionally increased the family leave wages eligible for the tax credit to \$12,000 (up from \$10,000) per employee and struck the FFCRA requirement that the first two weeks of family leave be unpaid. The tax credit limit is \$511 per day and \$5,110 total for paid sick leave, and \$200 per day and \$12,000 total for paid family leave.

The ARPA also expanded the tax credit for emergency paid sick leave. Specifically, the ARPA permits the credit to be taken for a new bank of emergency paid sick leave of 80 hours per employee, beginning April 1, 2021. Further, the ARPA added COVID-19 testing and vaccination as qualifying reasons for emergency paid sick leave, just as it had for expanded paid family leave.

## IRS Resources

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The IRS released and later updated a series of FAQs on the FFCRA leave tax credits, covering the following topics:

- General information
- What is an eligible employer
- Determining the amount of the tax credit for qualified sick leave wages
- Determining the amount of the tax credit for qualified family leave wages
- Determining the amount of allocable qualified health plan expenses
- How to claim the credits
- How should an employer substantiate eligibility for tax credits for qualified leave wages?
- Periods of time for which credits are available
- Special issues for employers: taxation and deductibility of tax credits
- Special issues for employers: interaction of the FFCRA tax credits with other tax credits
- Special issues for employers: use of third-party payers
- Special issues for employers: other issues
- Special issues for employees
- Specific provisions related to self-employed individuals

Employers should note that the FAQs do not currently reflect the changes the ARPA made to the leave credit. However, after the ARPA was passed, the IRS issued a [fact sheet](#) and a [snapshot](#) document on the topic.