GBS COVID-19 Update

The American Rescue Plan (ARPA):
Impact on the Families First Coronavirus Response Act of 2020 (FFCRA)

Quick Summary and Timeline

The American Rescue Plan Act of 2021 (ARPA), signed into law on March 11, 2021, is the most recent Congressional action intended to address damage caused by the COVID pandemic. Financial relief is provided for individuals, state and local governments, schools, businesses and more.

One of the ARPA provisions extends paid time off and associated employer tax credits that were offered under the Families First Coronavirus Response Act (FFCRA). The expansion is temporary and applies from April 1, 2021, through Sept. 30, 2021. ARPA also expands the circumstances for which eligible employees can take such leave and makes a few additional adjustments from the original FFCRA provisions.

- The Families First Coronavirus Response Act of 2020 (FFCRA) passed in March 2020. FFFCRA mandated two kinds of leave for specific COVID related situations and provided tax credits to employers. FFCRA was effective through December 31, 2020.
- The Consolidated Appropriations Act of 2021 (CAA) passed in December 2020. It did not require employers to continue providing FFCRA leave but it did provide an extended tax credit through March 31, 2021 for employers who opted to voluntarily provide it.
- The American Rescue Plan Act of 2021 (ARPA) passed in March 2021. It does not require employers to continue providing FFCRA leave but it does provide an extended tax credit to qualified employers who opt to voluntarily provide it. The extension is effective from April 1, 2021 through September 30, 2021. It also expands the situations for which an employee may use the FFCRA leave.

Background

The FFCRA became law on March 18, 2020 which included two new temporary laws that provided COVID emergency paid leave provisions:

- Emergency Paid Sick Leave Act (EPSLA)
- Emergency Family and Medical Leave Act (EFMLA)

Employers that provided paid leave under EPSLA and/or EFMLA to qualifying employees were able to take tax credits in an amount equal to 100 percent of the leave they paid in wages to qualifying employees.

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The EPSLA and EFMLA were set to expire on Dec. 31, 2020, but the CCA extended the provisions through March 31, 2021 for employers that opted to voluntarily continue. The extension was not mandatory and the CCA did not make any additional changes to these provisions.

The ARPA Update to FFCRA Leave

Like the CCA, the ARPA extends the date for which an employer may voluntarily provide leave under EPSLA and/or EMFLA, this time through September 30, 2021. However, ARPA goes further than the CCA. ARPA expands the reasons for which eligible employees may take paid leave under EPSLA and/or EFMLA and also makes some additional key changes that are explained below. Employers who voluntarily continue to utilize these benefits should become familiar with how ARPA changes the original FFCRA rules. Note that the employer tax credits will not be recognized by the IRs if an employer fails to properly administer the special leave.

The original FFCRA rules applied to employers with fewer than 500 employees and, only for the Emergency Sick Leave provisions, includes government/public employers of any size. ARPA does not change the employers to which these provisions apply.

The original FFCRA required employers to whom FFCRA applied to provide up to twelve (12) weeks of paid leave under EFMLA and up to two (2) weeks (or 80 hours) of paid leave under EPSLA. ARPA doesn't change the number of weeks but there are some important related changes as outlined below.

ARPA and BOTH the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Act (EFMLA)

- Employers are still allowed to take tax credits in an amount equal to 100 percent of the leave under EPSLA and EFMLA they pay in wages to qualifying employees.
- The maximum combined EPSLA and EFMLA leave is still not to exceed 12 weeks.
- There is a new non-discrimination provision. Tax credits are available only to an employer that does not discriminate in favor of highly compensated employees (based on the rules in section 414(q) of the Internal Revenue Code), full-time employees or employees for employment tenure.

ARPA and the Emergency Paid Sick Leave Act (EPSLA)

- An employer may provide paid leave up to 80 hours (2 weeks) under EPSLA
    - For employees who take leave for one of the following 3 reasons, the amount of paid leave provided is based on regular pay with a maximum that cannot exceed $511 per day ($5,110 total). This is the same as the original rule in the FFCRA.
        - Coronavirus Quarantine or Isolation Order (Government)
        - Advice from health care provider to self-quarantine
        - Experiencing symptoms of COVID-19 and seeking a medical diagnosis

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- For employees who take leave for one of the following 3 reasons, the amount of paid leave provided is based on 2/3 regular pay with a maximum cannot exceed $200 per day ($2,000 total). This is the same as the original rule in the FFCRA.
    - Caring for individual in quarantine/isolation or who has been advised provider to self-quarantine
    - Experiencing other substantially similar condition specified by HHS
    - Caring for own child due to school closure or childcare unavailability due to health emergency
- Changes to FFCRA under ARPA:
    - An employee's bank of available EPSLA leave is reset to the full 10 days starting on April 1, 2021 even if the employee took EPSLA during 2020.
    - An employee may take EPSLA for the original six (6) reasons stated above as well as for the following new additional three (3) reasons:
        - When seeking/awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 if employee has been exposed to COVID-19, or if employer requested such test or diagnosis.
        - When obtaining a COVID-19 vaccination.
        - When recovering from an injury, disability, illness or condition related to COVID-19 vaccination.
    - The new 3 new categories (listed directly above) are paid at full normal pay with a maximum that cannot exceed $511 per day.

ARPA and Emergency Family Medical Leave Act (EFMLA)

- An employer may provide an additional 12 weeks of paid leave under EFMLA to an employee who is caring for his/her own child due to school closure or childcare unavailability as a result of the COVID health emergency. This is the same as the original rule in the FFCRA.
    - The amount of paid leave provided in the original FFCRA is based on 2/3 regular pay and the maximum cannot exceed $200 per day with a maximum cap of $10,000 total.
        - ARPA changes the total maximum from $10,000 to $12,000.
    - For the first 2 weeks (10 days), the original FFCRA stated it must be unpaid leave (but may substitute regular accrued leave or emergency sick leave) and the remaining 10 weeks must be paid leave.
        - ARPA eliminates the 2 weeks (10 day) period in which the leave was unpaid. The amount is reset to a full 12 weeks starting on April 1, 2021 even if leave based on EFMLA was taken during 2020.
    - Employees must have worked for the employer at least 30 days, which is the same as the original rule in the FFCRA.

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- The original FFCRA allowed leave only for an employee who was caring for his/her own child due to school closure or childcare unavailability as a result of the COVID health emergency, but ARPA adds to EFMLA leave all the circumstances allowed under EPSLA as well as the 3 new reasons created by ARPA:
  - Coronavirus Quarantine or Isolation Order (Govt)
  - Advice from health care provider to self-quarantine
  - Experiencing symptoms of COVID-19 and seeking a medical diagnosis
  - Caring for individual in quarantine/isolation or who has been advised provider to self-quarantine
  - Experiencing other substantially similar condition specified by HHS
  - Seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 if such employee has been exposed to COVID-19 or the employee's employer has requested such test or diagnosis
  - Obtaining COVID-19 vaccination
  - Recovering from any injury, disability, illness or condition related to COVID-19 vaccination

Please don't hesitate to contact your GBS team regarding any clarifying questions related to the FFCRA, CAA or ARPA.

The evolution of the COVID-19 epidemic is constantly evolving. The information in this document is based on what known at this time. As things change, we will continue to update you as it affects employee benefits compliance rules.

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This information is provided as educational material only and is not intended as legal, financial or tax advice. Consult your legal counsel for complete details on your compliance requirements for your plan(s).

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