



## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021 for Leave After March 31, 2021

FS-2022-15, March 2022

This Fact Sheet updates frequently asked questions (FAQs) for the Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021 for Leave After March 31, 2021.

These FAQs additions are as follows:

- New — Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Special Issues for Employers — Other Issues: Q98a
- New — Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Specific Provisions Related to Self-Employed Individuals: Q116a

*These FAQs are being issued to provide general information to taxpayers and tax professionals as expeditiously as possible. Accordingly, these FAQs may not address any particular taxpayer's specific facts and circumstances, and they may be updated or modified upon further review. Because these FAQs have not been published in the Internal Revenue Bulletin, they will not be relied on or used by the IRS to resolve a case. Similarly, if an FAQ turns out to be an inaccurate statement of the law as applied to a particular taxpayer's case, the law will control the taxpayer's tax liability. Nonetheless, a taxpayer who reasonably and in good faith relies on these FAQs will not be subject to a penalty that provides a reasonable cause standard for relief, including a negligence penalty or other accuracy-related penalty, to the extent that reliance results in an underpayment of tax. Any later updates or modifications to these FAQs will be dated to enable taxpayers to confirm the date on which any changes to the FAQs were made. Additionally, prior versions of these FAQs will be maintained on IRS.gov to ensure that taxpayers, who may have relied on a prior version, can locate that version if they later need to do so.*

More information about [reliance is available](#). These FAQs were announced in [IR-2022-47](#).

## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021 for Leave After March 31, 2021

### Background

**Note:** These FAQs address the tax credits available under the American Rescue Plan Act of 2021 (the "ARP") by employers with fewer than 500 employees and certain governmental employers without regard to the number of employees ("Eligible Employers") for qualified sick and family leave wages ("qualified leave wages") paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021, as well as the equivalent credits available for certain self-employed individuals. For information about the tax credits that may be claimed for qualified leave wages paid with respect to leave taken by employees prior to April 1, 2021, under the Families First Coronavirus Response Act ("FFCRA") and the COVID-related Tax Relief Act (the "Relief Act"), see [Tax Credits for Paid Leave Under the Families First Coronavirus Response Act for Leave Prior to April 1, 2021 FAQs](#).



Although the requirement that Eligible Employers provide leave under the Emergency Paid Sick Leave Act ("EPSLA") and Emergency Family and Medical Leave Expansion Act ("Expanded FMLA") under the FFCRA does not apply after December 31, 2020, the tax credits under sections 3131 through 3133 of the Internal Revenue Code ("the Code") are available for qualified leave wages an Eligible Employer provides with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021, if the leave would have satisfied the requirements of the EPSLA and Expanded FMLA, as amended for purposes of the ARP.

## Frequently Asked Questions

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## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Overview

Throughout these FAQs, the use of the word "work," unless otherwise noted, is inclusive of telework.

### **COVID-19-Related Tax Credits Extended for Paid Leave for Periods Beginning April 1, 2021, through September 30, 2021.**

Sections 3131 through 3133 of the Code were enacted by the ARP, on March 11, 2021, to allow Eligible Employers to claim refundable tax credits that reimburse them for the cost of providing qualified sick and family leave wages with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021, either for the employee's own health needs or to care for family members. Employees may receive up to ten days of paid sick leave and up to 12 weeks of paid family leave. Certain self-employed individuals in similar circumstances are entitled to similar credits.

For a more detailed overview of the law, see "Overview of Paid Leave Tax Credits under the ARP," below.

For FAQs, see "[General Information FAQs](#)," and the sections that follow. The FAQs will be updated periodically to address changes in the law or additional questions as they are raised.

### **Overview of Paid Leave Tax Credits under the ARP**



The ARP amended and extended the tax credits available to Eligible Employers providing paid sick and family leave consistent with the leave provided under the FFCRA. Under the FFCRA, enacted March 18, 2020, employers were required to provide paid leave through two separate provisions: (1) the EPSLA, under which employees received to up to 80 hours of paid sick time when they were unable to work for certain reasons related to COVID-19, and (2) Expanded FMLA, under which employees received paid family leave to care for a child whose school or place of care was closed or child care provider was unavailable for reasons related to COVID-19. The obligation for employers to provide paid leave under the EPSLA and the Expanded FMLA applied to qualified leave wages paid with respect to leave taken by employees beginning on April 1, 2020, through December 31, 2020. The FFCRA provided that Eligible Employers providing paid leave that satisfied the requirements of the EPSLA and the Expanded FMLA for the periods of time during which employees were unable to work (including telework) were permitted to claim fully refundable tax credits to cover the cost of the paid leave wages. Certain self-employed persons in similar circumstances were entitled to similar credits. The Relief Act extended the tax credits available to Eligible Employers for paid sick and family leave that would have satisfied the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the Relief Act, for qualified leave wages paid with respect to leave taken by employees through March 31, 2021.

Under the ARP, refundable tax credits are available to Eligible Employers providing paid sick and family leave wages that otherwise would have satisfied the requirements of the EPSLA and Expanded FMLA, as amended for purposes of the ARP, paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021. The ARP codified these credits in sections 3131 through 3133 of the Code. These tax credits are increased by the Eligible Employer's cost of maintaining health insurance coverage allocable to the qualified leave wages ("allocable qualified health plan expenses") and certain amounts paid under collectively bargained agreements by the Eligible Employer that are properly allocable to the qualified leave wages ("certain collectively bargained contributions"). Under section 3133 of the Code, the tax credits are also increased by the employer's share of social security and Medicare taxes imposed on the qualified leave wages.

Under sections 9642 and 9643 of the ARP, self-employed individuals are entitled to equivalent credits based on similar circumstances in which the individual is unable to work. For more information about how self-employed individuals can claim the credits, see "[Specific Provisions Related to Self-Employed Individuals](#)".

For leave required under the FFCRA prior to January 1, 2021, the Wage and Hour Division of the Department of Labor (DOL) administers the EPSLA and the Expanded FMLA and issued regulations at 29 CFR Part 826 and posted FAQs and relevant information about the paid leave provisions. See the DOL's [Families First Coronavirus Response Act: Questions and Answers](#).

The following section provides an overview of the ARP's refundable paid leave credit provisions, and the FAQs that follow provide more detailed information regarding the requirements, limitations, and application of the paid leave credits.

## **Overview of Paid Sick Leave Refundable Credit (updated July 29, 2021)**

Under the ARP, Eligible Employers are entitled to tax credits if they provide employees with paid sick leave if the employee is unable to work due to any of the following:

1. the employee is under a Federal, State, or local quarantine or isolation order related to COVID-19;



2. the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. the employee is:
  - a. experiencing symptoms of COVID-19 and seeking a medical diagnosis,
  - b. 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
  - c. obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to the immunization;
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 the child of the employee if the school or place of care of the child has been closed, or the childcare provider of the child 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 (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:
  - a. to accompany an individual to obtain immunization related to COVID-19, or
  - b. to care for an individual who is recovering from any injury, disability, illness, or condition related to the immunization. For more information on who is an "individual" for purposes of this condition, see "[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?"](#)" and "[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?"](#)"

### **An Eligible Employer may claim a tax credit for qualified sick leave wages in the following amounts:**

- For an employee who is unable to work due to reasons described in (1), (2) or (3) above, the Eligible Employer may claim a tax credit for up to two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay, or, if higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$511 per day and \$5,110 in the aggregate for leave taken beginning on April 1, 2021, through September 30, 2021. For more information, see "[What is the rate of pay for qualified sick leave wages if an employee is unable to work due to the employee's own health needs and the maximum amount of qualified sick leave wages that may be taken into account?"](#)"
- For an employee who is unable to work due to reasons described in (4), (5) or (6) above, the Eligible Employer may claim a tax credit for up to two weeks (up to 80 hours) of paid sick leave at 2/3 the employee's regular rate of pay or, if higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$200 per day and \$2,000 in the aggregate for leave taken beginning on April 1, 2021, through September 30, 2021. For



more information, see "[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?](#)"

The Eligible Employer is entitled to a fully refundable tax credit for qualified sick leave wages it pays. The Eligible Employer is subject to the employer's share of social security and Medicare taxes imposed on those qualified sick leave wages; however, the tax credit is increased by the amount of the employer's share of social security and Medicare taxes imposed on the qualified sick leave wages, as well as allocable qualified health plan expenses, and certain collectively bargained contributions during the sick leave period.

### **Overview of Paid Family Leave Refundable Credit**

Under the ARP, Eligible Employers are entitled to tax credits if they provide employees with paid family leave because the employee is unable to work due to any of the reasons listed above for which Eligible Employers may provide paid sick leave that would have satisfied the requirements of the EPSLA, as amended for purposes of the ARP. An Eligible Employer may claim a tax credit for qualified family leave wages for an employee who is unable to work due to any of those circumstances, at 2/3 the employee's regular pay, up to \$200 per day and \$12,000 in the aggregate for qualified family leave wages paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021. Up to 12 weeks of qualifying leave can be counted towards the paid family leave tax credit. An Eligible Employer may not claim the credit for providing paid family leave for any wages for which it claimed a tax credit for providing paid sick leave. For more information, see "[What is included in "qualified family leave wages"?](#)"

The Eligible Employer is entitled to a fully refundable tax credit for qualified family leave wages it pays. The Eligible Employer is subject to the employer's share of social security and Medicare taxes imposed on those wages; however, the Eligible Employer's tax credit is increased by the employer's share of social security and Medicare taxes imposed on the qualified sick leave wages, as well as allocable qualified health plan expenses, and certain collectively bargained contributions during the family leave period. For more information, see "[How does an Eligible Employer determine the amounts and rate of pay of the qualified family leave wages to pay?](#)"

### **Claiming the Paid Sick and Family Leave Credits**

Under sections 3131 through 3133 of the Code, Eligible Employers are entitled to receive the credits for the full amount of qualified leave wages and certain collectively bargained contributions, plus allocable qualified health plan expenses and the amount of the employer's share of social security and Medicare taxes imposed on the qualified leave wages, that are paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021. The credit is allowed against the taxes imposed on employers by section 3111(b) of the Code (Hospital Insurance (Medicare tax)) and so much of the taxes imposed on employers under section 3221(a) of the Code as are attributable to the rate in effect under section 3111(b) of the Code (the Railroad Retirement Tax Act Tier 1 rate) on all wages and compensation, respectively, paid to all employees. If the amount of the credit exceeds the Eligible Employer's share of these federal employment taxes, then the excess is treated as an overpayment and refunded to the Eligible Employer under sections 6402(a) or 6413(b) of the Code. The qualified leave wages are subject to the taxes imposed on employers by sections 3111(a) and 3111(b) of the Code and, for railroad employers, the Railroad Retirement Tax Act Tier 1 rate under section 3221(a) of the Code.

Eligible Employers that pay qualified leave wages may retain an amount of all federal employment taxes equal to the amount of the anticipated tax credits based on qualified leave wages paid (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages), rather than depositing the employment taxes with the IRS. The federal employment taxes



that are available for retention by Eligible Employers include federal income taxes withheld from employees, the employees' share of social security and Medicare taxes, and the employer's share of social security and Medicare taxes with respect to all employees.

If the federal employment taxes that are available for retention are not sufficient to cover the Eligible Employer's cost of qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages), then the Eligible Employer may file a request for an advance payment from the IRS using the applicable version of [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF for the relevant calendar quarter.

Eligible Employers claiming these credits must retain records and documentation related to and supporting each employee's leave to substantiate the claim for the credits, as well retaining the [Forms 941, Employer's Quarterly Federal Tax Return](#) PDF, and 7200, and any other applicable filings made to the IRS requesting the credits.

For more detail on the refundable tax credits and the procedures to receive payment of the advance credit, see "[How to Claim the Credits.](#)"

## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: General Information

### **1. What paid leave tax credits does the American Rescue Plan Act of 2021 provide? (added June 11, 2021)**

The ARP provides Eligible Employers with tax credits to cover certain costs of providing employees with paid sick and family leave for specified reasons related to COVID-19, for qualified leave wages paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021.

### **2. When can Eligible Employers claim the paid leave tax credits? (added June 11, 2021)**

Under the ARP, Eligible Employers may claim tax credits for qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021.

Eligible Employers may claim the credits on their federal employment tax returns (e.g., [Form 941, Employer's Quarterly Federal Tax Return](#) PDF), but they can benefit more quickly from the credits by reducing their federal employment tax deposits. If there are insufficient federal employment taxes to cover the amount of the credits, an Eligible Employer may request an advance payment of the credits from the IRS by submitting the applicable version of [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) for the relevant calendar quarter.

For the circumstances, amounts, and period for which the credits are available, see "[Determining the Amount of the Tax Credit for Qualified Sick Leave Wages](#)," "[Determining the Amount of the Tax Credit for Qualified Family Leave Wages](#)," and "[Periods of Time for Which Credits are Available](#)."

### **3. When will Eligible Employers receive the credits? (added June 11, 2021)**

Eligible Employers may receive payment of the credits after qualified leave wages have been paid, in accordance with applicable IRS procedures.

For more information, see "[How do Eligible Employers claim the credit?](#)"



#### **4. What documentation must an Eligible Employer retain to substantiate eligibility to claim the tax credits? (added June 11, 2021)**

Eligible Employers claiming the credits for qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) must retain records and documentation related to and supporting each employee's leave to substantiate the claim for the credits, and retain the [Forms 941, Employer's Quarterly Federal Tax Return](#) PDF, and [7200, Advance of Employer Credits Due To COVID-19](#) PDF, and any other applicable filings made to the IRS requesting the credits.

For more information, see "[How Should an Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?](#)"

#### **5. Which employers are Eligible Employers for purposes of claiming the tax credits? (added June 11, 2021)**

Employers that are Eligible Employers entitled to claim the refundable tax credits with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021, are employers with fewer than 500 employees (and certain governmental employers without regard to the number of employees) that provide paid leave that would have satisfied the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP.

Note: Neither the Federal government nor any agency or instrumentality of the Federal government is an Eligible Employer entitled to receive tax credits for providing paid leave wages under sections 3131 or 3132 of the Code, except for an organization described in section 501(c)(1) of the Code. State or local governments and their agencies or instrumentalities and tribal governments that pay qualified leave wages under sections 3131 or 3132 of the Code are Eligible Employers entitled to claim the tax credits for qualified leave wages.

For more information, see "[How is the "fewer than 500 employees" threshold determined for purposes of determining an employer's eligibility for the credits](#)", and "[What is an Eligible Employer?](#)"

#### **6. What makes the credits "fully refundable"? (added June 11, 2021)**

The credits are fully refundable because the Eligible Employer may get a refund if the amount of the credits is more than certain federal employment taxes the Eligible Employer owes. That is, if for any calendar quarter the amount of the credits the Eligible Employer is entitled to exceeds the Eligible Employer's portion of the Medicare tax on all wages (or the Eligible Employer's portion of the Medicare tax on all compensation for Eligible Employers subject to the Railroad Retirement Tax Act) paid to all employees, then the excess is treated as an overpayment and refunded to the Eligible Employer under section 6402(a) or 6413(b) of the Code.

#### **7. What is the amount of the refundable tax credits available to Eligible Employers? (added June 11, 2021)**

The credits are equal to 100 percent of up to two weeks (to a maximum of 80 hours) of the qualified sick leave wages and up to 12 weeks of the qualified family leave wages (including certain collectively bargained contributions), plus allocable qualified health plan expenses, and the employer's allocable share of social security and Medicare taxes imposed on the qualified leave wages) that an Eligible Employer pays with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021.



**Example:** An Eligible Employer pays \$10,000 in qualified sick leave wages and qualified family leave wages with respect to leave taken by an employee during the second quarter of 2021 (that is, April 1, 2021, through June 30, 2021). The Eligible Employer must withhold the employee's share of social security and Medicare taxes imposed on the \$10,000 in qualified leave wages and it owes the employer's share of social security tax and Medicare tax imposed on the \$10,000. The Eligible Employer is entitled to a credit equal to \$10,765, which includes the \$10,000 in qualified leave wages plus \$620 for the employer's share of social security tax, plus \$145 for the employer's share of Medicare tax. (This example does not include any allocable qualified health plan expenses or certain collectively bargained contributions.) When the Eligible Employer files its federal employment tax return for the second quarter of 2021, this amount may be applied first against the Eligible Employer's share of Medicare tax on any wages paid in the second quarter of 2021. Any credit amount in excess of the Eligible Employer's share of Medicare tax is refundable.

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

## 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"?](#)"

## **10. What are "[qualified health plan expenses](#)"? (added June 11, 2021)**

Qualified health plan expenses are amounts paid or incurred by an Eligible Employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Code), but only to the extent that the amounts are excluded from the gross income of employees by reason of section 106(a) of the Code.

For more information, see "[Determining the Amount of Allocable Qualified Health Plan Expenses.](#)"

## **11. What are the "[certain collectively bargained contributions](#)" paid by an Eligible Employer that are eligible for the credit? (added June 11, 2021)**

The collectively bargained contributions paid by an Eligible Employer that are eligible for the credit are collectively bargained defined benefit pension plan contributions and collectively bargained apprenticeship program contributions that are properly allocable to qualified leave wages.

For more information, see "[Determining the Amount of Allocable Collectively Bargained Contributions.](#)"



## 12. How do Eligible Employers claim the credits? (added June 11, 2021)

Eligible Employers report their total qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) for each quarter on their federal employment tax return, usually [Form 941, Employer's Quarterly Federal Tax Return](#) PDF. Form 941 is used by most employers to report income tax and social security and Medicare taxes withheld from employee wages, as well as the employer's own share of social security and Medicare taxes.

In anticipation of receiving the credits, Eligible Employers can cover qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) by accessing federal employment taxes, including withheld taxes, that would otherwise be required to be deposited with the IRS. This means that in anticipation of claiming the credits on the Form 941, Eligible Employers can retain the federal employment taxes that they otherwise would have deposited, including federal income tax withheld from employees, the employees' share of social security and Medicare taxes, and the employer's share of social security and Medicare taxes with respect to all employees. The [Form 941 instructions](#) PDF explain how to reflect the reduced liabilities for the quarter related to the deposit schedule.

For more information, see "[How to Claim the Credits](#)."

## 13. What if an Eligible Employer does not have enough federal employment taxes set aside for deposit to cover amounts provided as qualified leave wages? (added June 11, 2021)

If an Eligible Employer does not have enough federal employment taxes set aside for deposit to cover amounts provided as qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages), the Eligible Employer may request an advance of the credits by completing the applicable version of [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF for the relevant calendar quarter. The Eligible Employer will account for the amounts received as an advance when it files its [Form 941, Employer's Quarterly Federal Tax Return](#) PDF, for the relevant quarter.

For more information about claiming the tax credits for providing qualified leave wages, see "[How to Claim the Credits](#)."

## 14. May an Eligible Employer reduce its federal employment tax deposit by the qualified leave wages that it has paid without incurring a failure to deposit penalty? (added June 11, 2021)

Yes. An Eligible Employer that pays qualified leave wages in a calendar quarter will not be subject to a penalty under section 6656 of the Code for failing to deposit federal employment taxes if:

- the Eligible Employer paid qualified leave wages to its employees in the calendar quarter before the required deposit;
- the total amount of federal employment taxes that the Eligible Employer does not timely deposit is less than or equal to the amount of the Eligible Employer's anticipated tax credit for the qualified leave wages for the calendar quarter as of the time of the required deposit; and
- the Eligible Employer did not seek payment of an advance credit by filing [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF, with respect to any portion of the anticipated credits it relied upon to reduce its deposits.



For more information about the relief from the penalty for failure to deposit federal employment taxes on account of qualified leave wages, see [Notice 2021-24](#) PDF.

## **15. Are similar tax credits available to self-employed individuals? (added June 11, 2021)**

Yes. Sections 9642 and 9643 of the ARP also provide comparable credits for self-employed individuals carrying on any trade or business within the meaning of section 1402 of the Code if the self-employed individual would be eligible to receive paid leave that would have satisfied the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP, if the individual were an employee of an Eligible Employer (other than the self-employed individual).

For more information about how the credits apply to self-employed individuals, see "Specific Provisions Related to Self-Employed Individuals."

## **16. What is the statute of limitations for assessment of potential tax attributable to a disallowance of a credit claimed under sections 3131 and 3132 of the Code? (added June 11, 2021)**

The statute of limitations for assessment of any amounts of potential tax attributable to the disallowance of a credit under sections 3131 and 3132 of the Code claimed for qualified leave wages will not expire until five years from the later of: (1) the date of filing of the original return that includes the calendar quarter in which the credit was claimed, or (2) the date the return is treated as filed under section 6501(b)(2) of the Code.

## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: What is an Eligible Employer?

### **17. How is the "fewer than 500 employees" threshold determined for purposes of determining an employer's eligibility for the credits? (added June 11, 2021)**

DOL guidance under the FFCRA provided that an employer has fewer than 500 employees if, at the time its employee's leave is to be taken, it employs fewer than 500 full-time and part-time employees within the United States, which includes any State of the United States, the District of Columbia, or any Territory or possession of the United States. In making this determination, the employer should include employees on leave; temporary employees who are jointly employed by it and another employer; and day laborers supplied by a temporary agency (regardless of whether it is the temporary agency or the client firm if there is a continuing employment relationship). Workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than employees, are not considered employees for purposes of the 500-employee threshold. In general, two or more entities are separate employers unless they meet the integrated employer test under the Family and Medical Leave Act of 1993 (FMLA). If two entities are an integrated employer under the FMLA, under the test provided by the DOL, then employees of all entities making up the integrated employer will be counted in determining employer coverage. These standards continue to apply for purposes of the ARP.

**Note:** Under the ARP, certain non-Federal governmental employers (as well as Federal governmental employers that are organizations described in section 501(c)(1) of the Code and exempt from tax under section 501(a) of the Code) may claim tax credits for providing paid leave. The 500 or fewer employee limitation does not apply to these governmental employers; hence, these governmental employers are eligible for the credit even if they have 500 or more employees.



## **18. Can governmental employers be Eligible Employers under sections 3131 and 3132 of the Internal Revenue Code? (added June 11, 2021)**

Generally, governmental employers (including any agency or instrumentality of the government) are eligible to receive tax credits for qualified leave wages paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021, without regard to the number of employees. However, the Federal government, and any agency or instrumentality of the Federal government that is not an organization described in section 501(c)(1) of the Code, is not an Eligible Employer and is not entitled to receive tax credits for providing qualified leave wages.

## **19. What organizations are considered an "instrumentality" of the Federal government for purposes of determining if an employer is an Eligible Employer under sections 3131 and 3132 of the Internal Revenue Code? (added June 11, 2021)**

In general, for employment tax purposes, the IRS considers six factors in determining whether an organization is an instrumentality. The six factors that are used to determine whether an organization is an instrumentality are:

- whether the organization is used for a governmental purpose and performs a governmental function;
- whether performance of the organization's function is on behalf of one or more states or political subdivisions;
- whether there are any private interests involved, or whether the states or political subdivisions involved have the powers and interests of an owner;
- whether control and supervision of the organization is vested in public authority or authorities;
- if express or implied statutory or other authority is necessary for the creation and/or use of such an instrumentality, and whether such authority exists; and
- the degree of financial autonomy and the source of its operating expenses.

See Rev. Rul. 57-128, 1957-1 C.B. 311. No one factor is determinative; instrumentality status is based on all the facts and circumstances.

## **20. Are employers in U.S. Territories eligible for the tax credits? (added June 11, 2021)**

Yes. Employers in U.S. Territories are eligible to claim the tax credits for qualified leave wages, assuming they are otherwise Eligible Employers. Sections 3131(f)(2) and 3132(f)(2) of the Code provide, in relevant part, that qualified sick leave wages and qualified family leave wages, respectively, are wages as defined in section 3121(a) of the Code for purposes of the Federal Insurance Contributions Act ("FICA") tax. Under section 3121(b), payments of wages by employers in U.S. territories are subject to FICA.

For more information on defining an Eligible Employer, see "[Which employers are Eligible Employers for purposes of claiming the tax credits?](#)"

## **21. Are household employers eligible for the tax credits? (added June 11, 2021)**

Yes. Assuming a household employer is otherwise an Eligible Employer, the Eligible Employer may claim tax credits for providing paid leave under sections 3131 and 3132 of the Code if the leave (1) would have satisfied the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP, and (2) is 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) or compensation (as defined in section 3231(c) of the Code, determined without regard to the exclusions from compensation under section 3231(c)(1) of the Code).



Whether a household employer provides paid leave to a household worker that would have satisfied the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP, depends on whether the household employer is an employer under the FLSA as interpreted by the DOL. In general, a household employer is considered to be the employer of the household worker under the FLSA if the household worker is "economically dependent" on the household employer for the opportunity to work.

## **22. Can Eligible Employers claim the tax credit for amounts paid to H-2A visa holders? (added June 11, 2021)**

Yes. Sections 3131(f)(2) and 3132(f)(2) of the Code define qualified sick leave wages and qualified family leave wages for purposes of the EPSLA and the Expanded FMLA, respectively, and as amended for purposes of the ARP, as 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. Therefore, although section 3121(b)(1) of the Code excludes from "employment" services performed by H-2A workers, Eligible Employers are entitled to tax credits under sections 3131 and 3132 of the Code for qualified leave wages paid to H-2A workers.

## **23. Are tribal governments eligible for the tax credits? (added June 11, 2021)**

Yes. Tribal governments that provide paid sick and family leave that would have satisfied the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP, are eligible to claim the tax credits for qualified leave wages.

## **24. Is an otherwise Eligible Employer eligible for the credit if the employer discriminates in favor of highly compensated employees, full-time employees, or employees on the basis of employment tenure? (added June 11, 2021)**

No. Under section 3131(j) and 3132(j) of the Code, a credit for qualified leave wages will not be allowed if an otherwise Eligible Employer discriminates in favor of highly compensated employees within the meaning of section 414(q) of the Code, full-time employees, or employees on the basis of employment tenure with that Eligible Employer with respect to the availability of the provision of qualified sick or family leave wages. A highly compensated employee within the meaning of section 414(q) the Code is an employee that (1) was a five percent owner at any time during the year or the preceding year or (2) received more than \$130,000 (indexed for 2021) in pay for the preceding year and, if elected by the employer, was in the top 20 percent of employees ranked by pay for the preceding year. To show that it does not discriminate, an Eligible Employer should maintain records demonstrating the availability of qualified leave wages to highly compensated and non-highly compensated employees, full-time and part-time employees, and without regard to employees' tenure with the Eligible Employer.

### Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Determining the Amount of the Tax Credit for Qualified Sick 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.

## **26. Do "qualified sick leave wages" include taxes imposed on or withheld from the wages? (added June 11, 2021)**

For purposes of the credit, qualified sick leave wages are calculated without regard to federal taxes imposed on or withheld from the wages, including the employees' and employer's shares of social security taxes, the employees' and employer's shares of Medicare tax, and federal income taxes required to be withheld.

Note: Under sections 3131 and 3133 of the Code, as added by the ARP, qualified sick leave wages are subject to the employer's share of social security tax and Medicare tax, but the tax credit that an Eligible Employer receives for paying qualified sick leave wages is increased by the employer's share of social security and Medicare taxes imposed on the qualified sick leave wages. Qualified sick leave wages under the FFCRA paid with respect to leave taken by employees prior to April 1, 2021, are only subject to the employer's share of Medicare tax (and not the employer's share of social security tax); therefore, the Eligible Employer is entitled to receive credits to offset only Medicare tax for leave for those periods. For more information about qualified sick leave wages paid with respect to leave taken prior to April 1, 2021, see [Tax Credits for Paid Leave Under the Families First Coronavirus Response Act for Leave Prior to April 1, 2021 FAQs](#).

## **27. Do "qualified sick leave wages" include wages paid for leave taken for COVID-19 testing, to receive a vaccination or to recover from vaccination? (added June 11, 2021)**

Yes. The ARP expanded the reasons for Eligible Employers to pay qualified sick leave wages under the EPSLA to include wages paid with respect to leave taken by employees beginning 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.

**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.

**28. What is the amount of the credit an Eligible Employer may receive for qualified sick leave wages that it pays? (added June 11, 2021)**

An Eligible Employer may claim a fully refundable tax credit equal to 100 percent of the qualified sick leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified sick leave wages) it pays. The maximum amount of qualified sick leave wages (including certain collectively bargained contributions) paid for purposes of the credit is up to \$511 per day and \$5,110 in the aggregate for reasons related to the employee's own health needs and up to \$200 per day and \$2,000 in the aggregate for reasons related to the employee's need to care for others.

For more information about how to determine the amount of qualified sick leave wages for which an Eligible Employer may receive credit, see "How does an Eligible Employer determine the amount of qualified sick leave wages it pays under the EPSLA, as amended for purposes of the ARP?", "[What is the rate of pay for qualified sick leave wages if an employee is unable to work due to the employee's own health needs and the maximum amount of qualified sick leave wages that may be taken into account?](#)," and "[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?](#)"

**29. How does an Eligible Employer determine the amount of qualified sick leave wages it pays under the EPSLA, as amended for purposes of the ARP? (added June 11, 2021)**

The amount of qualified sick leave wages for which an Eligible Employer may claim the credit varies depending on the reason for which the employee is unable to work, the duration of the employee's absence, the employee's hours, and the employee's regular rate of pay (or, if higher, the federal minimum wage or any applicable State or local minimum wage).



For more information see "What is the rate of pay for qualified sick leave wages if an employee is unable to work due to the employee's own health needs and the maximum amount of qualified sick leave wages that may be taken into account?" as well as "[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?](#)"

### **30. What is the rate of pay for qualified sick leave wages if an employee is unable to work due to the employee's own health needs and the maximum amount of qualified sick leave wages that may be taken into account? (added June 11, 2021)**

If an 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; 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 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,

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 the greatest of the following:

- the employee's regular rate of pay (as determined under section 7€ 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 for these reasons is up to \$511 per day and \$5,110 in the aggregate.

### **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.

### **32. How are employees' hours determined for purposes of the paid sick leave requirements? (added June 11, 2021)**

Full-time employees can receive up to 80 hours of paid sick leave with respect to leave taken beginning on April 1, 2021, through September 30, 2021, for which an Eligible Employer may claim a credit. Part-time employees can receive the number of hours of paid sick leave that the employee works, on average, in a two-week period for leave taken beginning on April 1, 2021 through September 30, 2021.

DOL guidance under the FFCRA provided rules for determinations of full-time or part-time status and calculating leave for part-time employees.

For the purposes of paid sick leave, a full-time employee is an employee who is normally scheduled to work 40 or more hours per week; a part-time employee is an employee who is normally scheduled to work fewer than 40 hours per week.

Generally, the employer calculates hours of leave for a part-time employee based on the number of hours the employee is normally scheduled to work. If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, the employer may use a six-month average to calculate the average daily hours. The part-time employee may take paid sick leave for this number of hours per day for up to a two-week period.

If this calculation cannot be made because the part-time employee has not been employed for at least six months, the employer uses the number of hours that the employer and the employee agreed that the employee would work upon hiring. And if there is no agreement, the employer may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of the employee's employment.

These standards continue to apply for purposes of the ARP.

The 80 hours of paid sick leave for which an Eligible Employer may claim a tax credit under section 3131 of the Code is determined without regard to any qualified sick leave wages which it paid with respect to leave taken by employees prior to the April 1, 2021. That is, the ARP "reset" the maximum amount of paid sick leave for which an Eligible Employer could claim tax credits for qualified leave wages paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021; unused paid sick leave for which an Eligible Employer did not claim tax credits under the FFCRA with respect to periods prior to April 1, 2021 does not increase the paid sick leave for which an Eligible Employer may claim tax credits under the ARP, and paid sick leave for which an Eligible Employer claimed tax credits under the FFCRA with respect to periods prior to April 1, 2021 does not reduce the paid sick leave for which an Eligible Employer may claim tax credits under the ARP.



### **33. Are amounts other than qualified sick leave wages included in the tax credit for paid sick leave? (added June 11, 2021)**

Yes. The tax credit for paid sick leave under section 3131 of the Code is increased by the amount of allocable qualified plan health expenses, certain collectively bargained contributions, and the employer's share of social security tax and Medicare tax imposed on the qualified sick leave wages.

For more information about the additions to the tax credit for allocable qualified health plan expenses and certain collectively bargained contributions, see "[Determining the Amount of Allocable Qualified Health Plan Expenses](#)," and "[Determining the Amount of Allocable Amounts Paid Under Certain Collectively Bargained Agreements](#)," respectively.

### **34. Are amounts other than qualified sick leave wages included in the amounts subject to the maximum daily and aggregate limits? (added June 11, 2021)**

Yes. The collectively bargained contributions are added to the qualified sick leave wages in applying the maximum daily and aggregate limits. That is, the maximum amount of qualified sick leave wages and certain collectively bargained contributions for which an Eligible Employer may claim the tax credit is \$511 per day or \$5,110 in the aggregate (or \$200 per day or \$2,000 in the aggregate, depending on the reason for which the Eligible Employer provided the leave). In contrast, the allocable qualified health plan expenses and the employer's share of social security and Medicare taxes imposed on the qualified sick leave wages are not included for the purposes of the maximum daily or aggregate limits.

### **35. Is a similar tax credit available to self-employed individuals? (added June 11, 2021)**

Yes. Section 9642 of the ARP also provides a comparable credit for self-employed individuals carrying on any trade or business within the meaning of section 1402 of the Code if the self-employed individual would be eligible to receive paid sick leave that would have satisfied the requirements of the EPSLA, as amended for purposes of the ARP, if the individual were an employee of an Eligible Employer (other than the self-employed individual).

For more information, see "[Specific Provisions Related to Self-Employed Individuals](#)."

## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Determining the Amount of the Tax Credit for Qualified Family Leave Wages

### **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.

### **37. Do "qualified family leave wages" include taxes imposed on or withheld from the wages? (added June 11, 2021)**

For purposes of the credit, qualified family leave wages are calculated without regard to federal taxes imposed on or withheld from the wages, including the employee's and employer's share of social security taxes, the employee's and employer's share of Medicare tax, and federal income taxes required to be withheld.

Note: Under sections 3132 and 3133 of the Code, as added by the ARP, qualified family leave wages are subject to the employer's share of social security tax and Medicare tax, but the tax credit that an Eligible Employer receives for paying qualified family leave wages is increased by the employer's share of social security and Medicare taxes imposed on the qualified family leave wages. Qualified family leave wages under the FFCRA paid with respect to leave taken by employees prior to April 1, 2021, are only subject to the employer's share of Medicare tax (and not the employer's share of social security tax); therefore, the Eligible Employer is entitled to receive credits to offset only Medicare tax for leave for those periods. For more information about qualified family leave wages paid with respect to leave taken prior to April 1, 2021, see [Tax Credits for Paid Leave Under the Families First Coronavirus Response Act for Leave Prior to April 1, 2021 FAQs](#).

### **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.

### **39. What is the amount of the credit that an Eligible Employer may receive for qualified family leave wages? (added June 11, 2021)**

An Eligible Employer may claim a fully refundable tax credit equal to 100 percent of the qualified family leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified family leave wages) it pays. The maximum amount of qualified leave wages (including certain collectively bargained contributions) paid to an employee that may be taken into account is \$200 per day, and \$12,000 in the aggregate.

For more information about how to determine the amount of family leave wages for which an Eligible Employer may receive credit, see "How does an Eligible Employer determine the amounts and rate of pay of the qualified family leave wages to pay?"



#### **40. How does an Eligible Employer determine the amounts and rate of pay of the qualified family leave wages to pay? (added June 11, 2021)**

Under the ARP, an Eligible Employer may provide an employee with qualified family leave wages for up to 12 weeks. To be able to claim the credit, the Eligible Employer pays the employee qualified family leave wages in an amount equal to at least 2/3 the employee's regular rate of pay (as determined under section 7(e) of the FLSA), multiplied by the number of hours the employee otherwise would have been scheduled to work, not to exceed \$200 per day and \$12,000 in the aggregate for leave taken by employees beginning on April 1, 2021, through September 30, 2021.

The \$12,000 in qualified family leave wages for which an Eligible Employer may claim a tax credit under section 3132 of the Code is determined without regard to any qualified family leave wages that it paid with respect to leave taken by employees prior to the April 1, 2021. That is, the ARP "reset" the maximum amount of paid family leave for which an employer may claim tax credits for wages paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021; unused paid family leave for which an Eligible Employer did not claim tax credits under the FFCRA with respect to periods prior to April 1, 2021 does not increase the paid family leave for which an Eligible Employer may claim tax credits under the ARP, and paid family leave for which an Eligible Employer claimed tax credits under the FFCRA with respect to periods prior to April 1, 2021 does not reduce the paid family leave for which an Eligible Employer may claim tax credits under the ARP.

#### **41. Are amounts other than qualified family leave wages included in the tax credit for paid family leave? (added June 11, 2021)**

Yes. The credit for paid family leave under section 3132 of the Code is increased by the amount of allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security tax and Medicare tax imposed on the qualified family leave wages paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021.

For more information about the additions to the tax credit for allocable qualified health plan expenses and certain collectively bargained contributions, see "[Determining the Amount of Allocable Qualified Health Plan Expenses](#)," and "[Determining the Amount of Allocable Collectively Bargained Contributions](#)," respectively.

#### **42. Are amounts other than qualified family leave wages included in the amounts subject to the maximum daily and aggregate limits? (added June 11, 2021)**

Yes. The collectively bargained contributions are added to the qualified family leave wages in applying the maximum daily and aggregate limits. That is, the maximum amount of qualified family leave wages and certain collectively bargained contributions for which an Eligible Employer may claim the tax credit is \$200 per day or \$12,000 in the aggregate. In contrast, the allocable qualified health plan expenses and the employer's share of social security and Medicare taxes imposed on the qualified family leave wages are not included for the purposes of the maximum daily or aggregate limits.

#### **43. Is a similar tax credit available to self-employed individuals? (added June 11, 2021)**

Yes. Section 9643 of the ARP also provides a comparable credit for self-employed individuals carrying on any trade or business within the meaning of section 1402 of the Code if the self-employed individual would be eligible to receive paid family leave that would have satisfied the requirements of the Expanded FMLA, as amended for purposes of the ARP, if the individual were an employee of an Eligible Employer (other than the self-employed individual).



For more information, "[Specific Provisions Related to Self-Employed Individuals.](#)"

## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Determining the Amount of Allocable Qualified Health Plan Expenses

### **44. Does the amount of qualified health plan expenses include both the portion of the cost paid by the Eligible Employer and the portion of the cost paid by the employee? (added June 11, 2021)**

The amount of qualified health plan expenses taken into account in determining the credits generally includes both the portion of the cost paid by the Eligible Employer and the portion of the cost paid by the employee with pre-tax salary reduction contributions. However, the amount of qualified health plan expenses does not include any portion of the cost paid by the employee with after-tax contributions.

### **45. For an Eligible Employer that sponsors more than one plan for its employees (for example, both a group health plan and a health flexible spending arrangement (health FSA)), how are the qualified health plan expenses for each employee determined? (added June 11, 2021)**

The qualified health plan expenses are determined separately for each plan. Therefore, for each plan, those expenses are allocated to the employees who participate in that plan. In the case of an employee who participates in more than one plan, the allocated expenses of each plan in which the employee participates are aggregated for that employee.

### **46. For an Eligible Employer that sponsors a fully-insured group health plan, how are the qualified health plan expenses of that plan allocated to the qualified sick or family leave wages on a pro rata basis? (added June 11, 2021)**

An Eligible Employer who sponsors a fully-insured group health plan may use any reasonable method to determine and allocate the plan expenses, including, but not limited to, (1) the COBRA applicable premium for the employee typically available from the insurer, (2) one average premium rate for all employees, or (3) a substantially similar method that takes into account the average premium rate determined separately for employees with self-only and other than self-only coverage.

If an Eligible Employer chooses to use one average premium rate for all employees, the allocable amount for each day an employee covered by the insured group health plan is entitled to qualified leave wages could be determined using the following steps:

The Eligible Employer's overall annual premium for the employees covered by the policy is divided by the number of employees covered by the policy to determine the average annual premium per employee.

- The average annual premium per employee is divided by the average number of work days during the year by all covered employees (treating days of paid leave as a work day and a work day as including any day on which work is performed) to determine the average daily premium per employee. For example, a full-year employee working five days per week may be treated as working 52 weeks x 5 days or 260 days. Calculations for part-time and seasonal employees who participate in the plan should be adjusted as appropriate. Eligible Employers may use any reasonable method for calculating part-time employee work days.
- The resulting premium should be adjusted to reflect any portion that employees contribute after-tax.
- The resulting amount is the amount allocated to each day of qualified sick or family leave wages.



**Example:** An Eligible Employer sponsors an insured group health plan that covers 400 employees, some with self-only coverage and some with family coverage. Each employee is expected to have 260 work days a year. (Five days a week for 52 weeks.) The employees contribute a portion of their premium by pre-tax salary reduction, with different amounts for self-only and family. The total annual premium for the 400 employees is \$5.2 million. (This includes both the amount paid by the Eligible Employer and the amounts paid by employees through salary reduction.)

For an Eligible Employer using one average premium rate for all employees, the average annual premium rate is \$5.2 million divided by 400, or \$13,000. For each employee expected to have 260 work days a year, this results in a daily average premium rate equal to \$13,000 divided by 260, or \$50. That \$50 is the amount of qualified health expenses allocated to each day of paid sick leave or paid family leave per employee.

**47. For an Eligible Employer that sponsors a self-insured group health plan, how are the qualified health plan expenses of that plan allocated to the qualified leave wages on a pro rata basis? (added June 11, 2021)**

An Eligible Employer who sponsors a self-insured group health plan may use any reasonable method to determine and allocate the qualified health plan expenses, including, but not limited to, (1) the COBRA applicable premium for the employee typically available from the administrator, or (2) any reasonable actuarial method to determine the estimated annual expenses of the plan.

If the Eligible Employer uses a reasonable actuarial method to determine the estimated annual expenses of the plan, then rules similar to the rules for insured plans are used to determine the amount of expenses allocated to an employee. That is, the estimated annual expense is divided by the number of employees covered by the plan, and that amount is divided by the average number of work days during the year by the employees (treating days of paid leave as work days and any day on which an employee performs any work as work days). The resulting amount is the amount allocated to each day of qualified sick or family leave wages.

**48. For an Eligible Employer that sponsors a health savings account (HSA), or Archer Medical Saving Account (Archer MSA) and a high deductible health plan (HDHP), are contributions to the HSA or Archer MSA included in the qualified health plan expenses? (added June 11, 2021)**

No. The amount of qualified health plan expenses does not include Eligible Employer contributions to HSAs or Archer MSAs. Eligible Employers that sponsor an HDHP should calculate the amount of qualified health plan expenses in the same manner as an insured group health plan, or a self-insured plan, as applicable.

**49. For an Eligible Employer that sponsors a health reimbursement arrangement (HRA), a health flexible spending arrangement (health FSA), or a qualified small employer health reimbursement arrangement (QSEHRA), are contributions to the HRA, health FSA, or QSEHRA included in the qualified health plan expenses? (added June 11, 2021)**

The amount of qualified health plan expenses may include contributions to an HRA (including an individual coverage HRA), or a health FSA, but does not include contributions to a QSEHRA. To allocate contributions to an HRA or a health FSA, Eligible Employers should use the amount of contributions made on behalf of the particular employee.

Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Determining the Amount of Allocable Collectively Bargained Contributions



## **50. What are amounts paid under certain collectively bargained agreements for which credits are allowed? (added June 11, 2021)**

Credits are allowed for the amount of the Eligible Employer's collectively bargained defined benefit pension plan contributions and the amount of the Eligible Employer's collectively bargained apprenticeship program contributions that are properly allocable to the qualified leave wages for which a credit is otherwise allowed.

## **51. How are amounts for collectively bargained defined benefit pension plan contributions and collectively bargained apprenticeship program contributions determined? (added June 11, 2021)**

Amounts are collectively bargained defined benefit pension plan contributions if they are (1) paid or incurred to a defined benefit plan (as defined in section 414(j) of the Code) that meets the requirements of section 401(a) of the Code and (2) paid based on the pension contribution rate set forth in a collective bargaining agreement. The collectively bargained defined benefit pension plan contributions are properly allocable to qualified leave wages if the contributions are required, pursuant to the applicable collective bargaining agreement, to be paid for the hours for which the qualified leave wages were provided.

Amounts are collectively bargained apprenticeship program contributions if they are (1) paid or incurred with respect to a registered apprenticeship program (registered under the Act of August 16, 1937 and meeting the standards of 29 CFR Pt. 29, Subpt. A and 29 CFR Pt. 30) and (2) paid or incurred based on an apprenticeship program contribution rate set forth in a collective bargaining agreement. The collectively bargained apprenticeship program contributions are properly allocable to the qualified leave wages if the contributions are required, pursuant to the applicable collective bargaining agreement, to be paid for the hours for which the qualified leave wages were provided.

If the applicable collective bargaining agreement specifies a contribution rate based on a unit of measure (contribution base unit) other than hours, the collectively bargained defined benefit pension plan contributions and collectively bargained apprenticeship program contributions that are properly allocable to the qualified leave wages will be based on the contributions associated with qualified leave wages under the terms of the applicable collective bargaining agreement.

## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: How to Claim the Credits

## **52. How does an Eligible Employer claim the refundable tax credits for qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes)? (added June 11, 2021)**

Eligible Employers report their total qualified leave wages for each calendar quarter on their federal employment tax returns, usually [Form 941, Employer's Quarterly Federal Tax Return](#) PDF. The Form 941 is used to report income and social security and Medicare taxes withheld by the Eligible Employer from employee wages, as well as the employer's share of social security and Medicare taxes. Eligible Employers report their total qualified leave wages for each calendar quarter on their federal employment tax returns, usually Form 941, Employer's Quarterly Federal Tax Return. The Form 941 is used to report income and social security and Medicare taxes withheld by the Eligible Employer from employee wages, as well as the employer's share of social security and Medicare taxes. Some Eligible Employers will use other federal employment tax returns, such as the [Form 944, Employer's Annual Federal Tax Return](#) PDF, [Form 943, Employer's Annual Federal Tax Return for Agricultural Employees](#) PDF, or [Form CT-1, Employer's Annual Railroad Tax Return](#) PDF, to report the amount of total qualified leave wages paid.



In anticipation of claiming the credit, Eligible Employers can (1) reduce federal employment taxes, including withheld taxes that would otherwise be required to be deposited with the IRS, and (2) when the amount of the credit exceeds the applicable federal employment taxes, request an advance payment of the credit from the IRS for the amount of the credit remaining after reducing federal employment tax deposits, by filing the applicable version of [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF for the relevant calendar quarter.

### **53. May an Eligible Employer that pays qualified leave wages reduce its federal employment tax deposits in anticipation of claiming the leave credits? (added June 11, 2021)**

An Eligible Employer that pays qualified leave wages to its employees in a calendar quarter before it is required to deposit federal employment taxes with the IRS for that quarter may reduce the amount of federal employment taxes it deposits for that quarter by the amount of the qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) paid in that calendar quarter in anticipation of the credit. The Eligible Employer must account for the reduction in deposits on the [Form 941, Employer's Quarterly Federal Tax Return](#) PDF, for the quarter.

**Example:** In the second quarter of 2021, an Eligible Employer paid \$5,000 in qualified leave wages and has \$10,000 in federal employment taxes, including taxes withheld from all of its employees, that would otherwise be required to be deposited with the IRS for wage payments made during the same quarter. The Eligible Employer reasonably anticipates a credit of \$6,000 (100 percent of qualified sick and family leave wages plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages). The Eligible Employer may keep up to \$6,000 of taxes the Eligible Employer was going to deposit, and it will not owe a penalty for keeping the \$6,000. The Eligible Employer is then only required to deposit the remaining \$4,000 on its required deposit date. The Eligible Employer will later account for the \$6,000 it retained when it files Form 941, for the quarter.

For more information about relief from failure to deposit penalties for failure to timely deposit certain federal employment taxes, see [Notice 2021-24](#) PDF and "May an Eligible Employer reduce its federal employment tax deposit by the qualified leave wages that it has paid without incurring a failure to deposit penalty?"

### **54. May an Eligible Employer reduce its federal employment tax deposits in anticipation of the leave credit without incurring a penalty for failing to deposit federal employment taxes? (added June 11, 2021)**

Yes. An Eligible Employer that pays qualified leave wages in a calendar quarter will not be subject to a penalty under section 6656 of the Code for failing to deposit federal employment taxes if:

- the Eligible Employer paid qualified leave wages to its employees in the calendar quarter before the required deposit,
- the total amount of federal employment taxes that the Eligible Employer does not timely deposit is less than or equal to the amount of the Eligible Employer's anticipated credit for the qualified leave wages for the calendar quarter as of the time of the required deposit, and
- the Eligible Employer did not seek payment of an advance credit by filing [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF, with respect to any portion of the anticipated credits it relied upon to reduce its deposits.



For more information, about the relief from the penalty for failure to deposit federal employment taxes on account of qualified wages, see [Notice 2021-24](#) PDF.

**Example:** In its first payroll period of the third quarter of 2021, Employer F pays \$3,500 in qualified sick and family leave wages under sections 3131 and 3132 of the Code and \$10,000 in qualified wages for purposes of the employee retention credit, among other wages for the payroll period. Employer F has \$9,000 of federal employment taxes available for deposit for the first payroll period of the third quarter of 2021. Employer F reasonably anticipates a \$4,250 paid leave credit (100 percent of qualified sick and family leave wages plus allocable qualified health expenses, certain collectively bargained contributions, and Employer F's share of social security and Medicare taxes imposed on the qualified leave wages) and a \$7,000 employee retention credit (70 percent of qualified wages) thus far for the third quarter.

Employer F reduces the \$9,000 federal employment tax deposit obligation by the \$4,250 anticipated paid leave credit, and then further reduces it to zero for \$4,750 of the \$7,000 anticipated employee retention credit. Employer F may request an advance of the remaining employee retention credit.

Employer F will not incur a failure to deposit penalty under section 6656 of the Code for reducing its federal employment tax deposit for the first payroll period of the third quarter to \$0.

For more information on requesting an advance for credit in excess of federal employment tax, see "May an Eligible Employer get an advance payment of the leave credits?"

## **55. May an Eligible Employer get an advance payment of the leave credits? (added June 11, 2021)**

Yes. Some Eligible Employers may not have sufficient federal employment taxes set aside for deposit to the IRS to cover their qualified leave wages through reduction of the amount to be deposited. Accordingly, the IRS has a procedure for obtaining an advance payment of the refundable credits. The Eligible Employer can file the applicable version of [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF for the relevant calendar quarter, to request an advance payment of the credit for the remaining qualified leave wages it has paid for which it did not have sufficient federal employment tax deposits.

If an Eligible Employer fully reduces its required deposits of federal employment taxes otherwise due on wages paid in the same calendar quarter to its employees in anticipation of receiving the credits, and it has not paid qualified leave wages in excess of this amount, it should not file a Form 7200. If it files a Form 7200, it will need to reconcile this advance payment of the credit and its deposits with the qualified leave wages on [Form 941, Employer's Quarterly Federal Tax Return](#) PDF (or other applicable federal employment tax return such as [Form 944, Employer's Annual Federal Tax Return](#) PDF, or [Form CT-1, Employer's Annual Railroad Retirement Tax Return](#) PDF, and it may have an underpayment of federal employment taxes for the quarter.

**Example:** During the second quarter of 2021, Employer G paid \$7,000 in qualified leave wages and is otherwise required to deposit \$8,000 in federal employment taxes on all wages paid. Employer G reasonably anticipates a \$9,000 leave credit (100 percent of qualified leave wages plus allocable qualified health expenses, certain collectively bargained contributions, and Employer G's share of social security and Medicare taxes imposed on the qualified leave wages). Employer G can keep the entire \$8,000 of employment taxes that Employer G was otherwise required to deposit without penalty as a portion of the credits it is otherwise entitled to claim on the Form 941. Employer G may file a request for an advance payment for the remaining \$1,000 by completing Form 7200. If Employer G does not request an advance payment of the credit, it may request that any overpayment be credited or refunded when it files its third quarter Form 941, and claims the credit on its return. Employer G must report all qualified wages, the credit for qualified



sick and family leave wages, and any advance credit received from Form 7200 filed for the quarter on the Form 941 for the quarter.

**56. If the credit allowed for qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) exceeds the Eligible Employer's share of Medicare tax owed for a quarter, how does the Eligible Employer get a refund of the excess credit? Does this affect what the Eligible Employer puts on its Form 941? (added June 11, 2021)**

If the amount of the credit exceeds the Eligible Employer's share of Medicare tax, then the excess is treated as an overpayment and refunded to the Eligible Employer under sections 6402(a) or 6413(b) of the Code. Consistent with its treatment as an overpayment, the excess will be applied to offset any remaining tax liability on the [Form 941, Employer's Quarterly Federal Tax Return](#) PDF, and the amount of any remaining excess will be reflected as an overpayment on the Form 941. Like other overpayments of federal taxes, the overpayment will be subject to offset under section 6402(a) of the Code prior to being refunded to the Eligible Employer.

**57. How does an Eligible Employer obtain Form 7200 and where should it send its completed form to receive the advance credit? Is there a minimum advance amount that can be claimed on a Form 7200? (added June 11, 2021)**

An Eligible Employer may obtain the applicable version of [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF for the relevant calendar quarter online and may fax its completed form to 855-248-0552. The minimum advance amount that can be claimed on a Form 7200 is \$25. A Form 7200 requesting an advance payment of less than \$25 will not be processed. Taxpayers can claim credits of less than \$25 on the [Form 941, Employer's Quarterly Federal Tax Return](#) PDF.

**58. Who can sign a Form 7200? Should a taxpayer submit additional documents to confirm that a person is authorized to sign a Form 7200? (added June 11, 2021)**

The [instructions for Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF, provide information on who may properly sign a [Form 7200](#) PDF for each type of entity. For corporations, the instructions provide that the president, vice president, or other principal officer who is duly authorized may sign a [Form 7200](#) PDF. For partnerships (including an LLC treated as a partnership) or unincorporated organizations, a responsible and duly authorized partner, member, or officer having knowledge of the entity's affairs may sign a Form 7200. For a single-member LLC treated as a disregarded entity for federal income tax purposes, the instructions provide that the owner or a principal officer who is duly authorized may sign the form. For trusts or estates, the instructions provide that the fiduciary may sign the Form 7200. Additionally, the instructions provide that a Form 7200 may be signed by a duly authorized agent of the taxpayer if a valid power of attorney has been filed.

In many circumstances, whether the person signing the Form 7200 is duly authorized or has knowledge of the partnership's or unincorporated organization's affairs is not apparent on the Form 7200. To help expedite and ensure proper processing of Form 7200, if a taxpayer has duly authorized an officer, partner, or member to sign Form 7200 (and that person is not otherwise explicitly permitted to sign the Form 7200 by nature of their job title), the taxpayer should submit a copy of the [Form 2848, Power of Attorney and Declaration of Representative](#) PDF, authorizing the person to sign the Form 7200 with the [Form 7200](#) PDF.

**59. When should the name and EIN of a third-party payer be included on Form 7200? (added June 11, 2021)**



Eligible Employers who file [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF, to claim an advance payment of credits are required to include on the form the name and EIN of the third-party payer they use to file their federal employment tax returns (such as the [Form 941, Employer's Quarterly Federal Tax Return](#) PDF) if the third-party payer uses its own EIN on the federal employment tax returns. This will ensure advance payment of the credits received by the common law employer is properly reconciled to the federal employment tax return filed by the third-party payer for the calendar quarter for which the advance payment of the credits is received.

To help expedite and ensure proper processing of Form 7200 and reconciliation of advance payment of the credits to the federal employment tax return for the calendar quarter, only those third-party payers who will file a federal employment tax return on behalf of an Eligible Employer using the third-party payer's name and EIN should be listed on the Form 7200. Typically, certified professional employer organizations (CPEOs), professional employer organizations (PEOs), and other section 3504 agents fall into this category of third-party payers.

If a third-party payer will file the federal employment tax return on an Eligible Employer's behalf using the Eligible Employer's name and EIN and not the name and EIN of the third-party payer, the Eligible Employer should not include the name and EIN of the third-party payer on the Form 7200. Typically, reporting agents and payroll service providers fall into this category of third-party payers.

**60. If a common law employer that is an Eligible Employer uses a third-party payer for only a portion of its workforce, should the Eligible Employer list the third-party payer on the Form 7200? (added June 11, 2021)**

In some cases, a common law employer may use the services of a third-party payer (such as a CPEO, PEO, or other section 3504 agent) to pay wages for only a portion of its workforce. In those circumstances, the third-party payer files an employment tax return (such as the [Form 941, Employer's Quarterly Federal Tax Return](#) PDF) for wages it paid to employees under its name and EIN, and the common law employer files an employment tax return for wages it paid directly to employees under its own name and EIN.

If the common law employer is claiming advance payments of credits for both wages paid directly to employees that will be reported on its own employment tax return and wages paid to other employees by a third-party payer that will be reported on the third-party payer's employment tax return, two separate [Forms 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF, should be filed: one for the wages paid by the common law employer with the name and EIN of the employer, and one for the wages paid by the third-party payer with the name and EIN of both the common law employer and the third-party payer.

To help expedite and ensure proper processing of Form 7200 and reconciliation of advance payment of the credits to the employment tax return when an employer uses a third-party payer such as a CPEO, PEO, or other section 3504 agent for only a portion of its workforce, a common law employer should include the name and EIN of the third-party payer only on the Form 7200 for advance payment of the credits for wages paid by the third-party payer and reported on the third-party payer's employment tax return. The common law employer should not include the name and EIN of the third-party payer on the Form 7200 for advance payments of the credits claimed for wages paid by the common law employer and reported on the common law employer's employment tax return.

**61. What is the last day taxpayers may submit a Form 7200 requesting an advance payment of leave credits? (added June 11, 2021)**

Taxpayers filing a [Form 941, Employer's Quarterly Federal Tax Return](#) PDF, may submit the applicable version of [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF, with respect to qualified leave wages paid in the second quarter of 2021 up to the earlier of August 2, 2021 or the date they file the Form 941 for the second quarter of



2021; or with respect to qualified leave wages paid in the third quarter of 2021, up to the earlier of November 1, 2021, or the date they file the Form 941 for the third quarter of 2021 to request an advance payment of the leave credits. Taxpayers filing a [Form 943, Employer's Annual Federal Tax Return for Agricultural Employees](#) PDF, [Form 944, Employer's Annual Federal Tax Return](#) PDF, or [Form CT-1, Employer's Annual Railroad Retirement Tax Return](#) PDF, may submit a Form 7200 with respect to qualified leave wages paid in the second quarter up to August 2, 2021, and with respect to wages paid in the third quarter, up to November 1, 2021.

**62. What if an Eligible Employer does not initially pay an employee qualified leave wages when the employee is eligible for those wages, but pays those wages at a later date? (added June 11, 2021)**

An Eligible Employer can claim the credits under the ARP once it has paid the employee for the period of paid sick leave or paid family leave, as long as the qualified leave wages paid are with respect to leave taken by the employee beginning on April 1, 2021, through September 30, 2021.

**63. In what order should an Eligible Employer apply the tax credits for qualified sick leave wages and qualified family leave wages against its share of Medicare taxes? (added June 11, 2021)**

When applying the credits against the Eligible Employer's share of Medicare taxes, the Eligible Employer should first apply its available credit for qualified sick leave wages and then its available credit for qualified family leave wages.

## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: How Should an Eligible Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?

**64. What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the paid sick leave or paid family leave credits? (added June 11, 2021)**

An Eligible Employer will substantiate eligibility for the paid sick leave or paid family leave credits if the employer receives a written request for the leave from the employee in which the employee provides:

- the employee's name;
- the date or dates for which leave is requested;
- a statement of the COVID-19 related reason the employee is requesting leave and written support for that reason; and
- a statement that the employee is unable to work, including by means of telework, for that reason.

In the case of a leave request based on a government quarantine or isolation order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or isolation, or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or isolation, or advised to self-quarantine is not the employee, that person's name and relation to the employee.

In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school (or summer camp, summer enrichment program, or other summer program) that has closed or place of care that is unavailable, and a statement that no other suitable person will be providing care for the child during the period for which the employee is receiving family medical leave.



In the case of a leave request based on obtaining vaccination or recovery from a condition related to vaccination, the statement from the employee should include the date of vaccination. In the case of a leave request based on awaiting the results of a COVID-19 test or diagnosis, due to either exposure or an employer request, the statement from the employee should include the date of the test.

Example: A state government directive specifies that employees quarantining either because they have COVID-19 symptoms or have been directly exposed to COVID-19 are not required to provide their employer with a COVID-19 test result or a healthcare provider's note to validate their illness or exposure and need for leave. A written request from an employee providing the name of the government entity and briefly describing the directive would satisfy the applicable substantiation requirements.

## **65. What additional records should an Eligible Employer maintain to substantiate eligibility for the paid sick leave or paid family leave credit? (added June 11, 2021)**

An Eligible Employer will properly substantiate eligibility for the paid sick leave or paid family leave credits if, in addition to the information set forth in the FAQ above ("[What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?](#)"), the employer creates and maintains records that include the following information:

- Documentation to show how the Eligible Employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework and qualified sick leave and qualified family leave.
- Documentation to show how the Eligible Employer determined the amount of qualified health plan expenses that the employer allocated to wages. See "[Determining the Amount of Allocable Qualified Health Plan Expenses](#)" for methods to compute this allocation.
- Documentation to show how the Eligible Employer determined the amount of collectively bargained benefits that the Eligible Employer allocated to wages. See "[Determining the Amount of Allocable Amounts Paid Under Certain Collectively Bargained Agreements](#)" for methods to compute this allocation.
- Copies of any completed [Forms 7200, Advance Payment of Employer Credits Due To COVID-19](#) PDF, that the Eligible Employer submitted to the IRS.
- Copies of the completed [Forms 941, Employer's Quarterly Federal Tax Return](#) PDF, that the Eligible Employer submitted to the IRS (or, for Eligible Employers that use third-party payers to meet their employment tax obligations, records of information provided to the third-party payer regarding the Eligible Employer's entitlement to the credit claimed on Form 941).

## **66. How long should an Eligible Employer maintain records to substantiate eligibility for the paid sick leave or paid family leave credit? (added June 11, 2021)**

An Eligible Employer should keep all records related to the paid sick and family leave credits for at least six years after the date the tax becomes due or is paid, whichever comes later. These records should be available for IRS review.

## **67. May an Eligible Employer choose to require information from employees in addition to that described in these FAQs? (added June 11, 2021)**

Yes. An Eligible Employer may choose to require additional information from the employee.



## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Periods of Time for Which Credits are Available

### **68. How long are the refundable tax credits for qualified leave wages available? (added June 11, 2021)**

The credits for qualified leave wages paid under the ARP apply to qualified leave wages paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021.

For more information on requirements and eligibility related to paid sick and family leave between April 1, 2020 and December 31, 2020, see the DOL's [Families First Coronavirus Response Act: Questions and Answers](#). For information on the tax credits available for qualified leave wages paid with respect to leave taken by employees prior to April 1, 2021, see

[Tax Credits for Paid Leave Under the Families First Coronavirus Response Act for Leave Prior to April 1, 2021 FAQs](#).

### **69. Are wages paid after September 30, 2021, qualified leave wages for purposes of the credit if paid for leave taken before September 30, 2021? (added June 11, 2021)**

Yes. Wages paid after September 30, 2021, may be qualified leave wages under the ARP so long as the wages are paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021.

## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Special Issues for Employers — Taxation and Deductibility of Tax Credits

### **70. What amount does an Eligible Employer receiving tax credits for qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) need to include in gross income? (added June 11, 2021)**

An Eligible Employer must include the full amount of the credits received for qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) in gross income.

### **71. What are the tax consequences of claiming the tax credits for a tax-exempt Eligible Employer? (added June 11, 2021)**

An Eligible Employer that is exempt from federal income taxation under section 501(a) of the Code must allocate the credits for qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) between activities substantially related to its exempt purposes and any unrelated trade or business activities, using the same allocation it uses in allocating the qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) for purposes of calculating its unrelated business taxable income for the year.

The portion (if any) of the tax credits that is allocable to an unrelated trade or business must be included in gross income from that unrelated trade or business for purposes of the tax imposed by section 511 of the Code. The portion (if any) of



the tax credits that is allocable to the tax-exempt Eligible Employer's exempt activities is exempt from federal income taxation under section 501(a) of the Code.

A tax-exempt Eligible Employer may deduct from gross income from an unrelated trade or business the amounts paid to an employee for qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) that are directly connected with carrying on that unrelated trade or business.

Note: Neither the Federal government nor any agency or instrumentality of the Federal government is an Eligible Employer entitled to receive tax credits for providing paid leave wages under sections 3131 or 3132 of the Code, except for an organization described in section 501(c)(1) of the Code. State or local governments and their agencies or instrumentalities and tribal governments that pay qualified leave wages under sections 3131 or 3132 of the Code are Eligible Employers entitled to claim the tax credits for qualified leave wages.

For more information, see "[What is an Eligible Employer?](#)"

**Example:** X, a tax-exempt Eligible Employer, derives gross income from the conduct of an unrelated trade or business. X employs Y who devotes 90 percent of her time to X's exempt activities and 10 percent of her time to X's unrelated business activity. X receives \$2,000 in tax credits for qualified leave wages (plus allocable qualified health plan expenses and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) paid to Y.

X allocates \$200 (10 percent of \$2,000) of the tax credits to gross income from its unrelated trade or business. X may deduct \$200 (10 percent of \$2,000), the portion of Y's qualified leave wages (plus allocable qualified health plan expenses and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) that is allocable to X's unrelated business activity, from its gross income from the unrelated trade or business.

## **72. May an Eligible Employer deduct as a business expense an amount paid to an employee for qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) for which it expects to claim the tax credits? (added June 11, 2021)**

Generally, an Eligible Employer's payments of qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified wages) are deductible by the Eligible Employer as ordinary and necessary business expenses in the taxable year that these wages are paid or incurred. An Eligible Employer may deduct as a business expense the amounts paid to an employee for qualified leave wages (plus allocable qualified health plan expenses and certain contributions to collectively bargained programs paid by an Eligible Employer that are properly allocable to qualified leave wages and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) for which the Eligible Employer expects to claim the tax credits under sections 3131 or 3132 of the Code, if the Eligible Employer is otherwise eligible to take the deduction. However, to avoid a double benefit to an employer that receives the tax credit, the Eligible Employer's income is increased by the amount of the credit. See "[What amount does an Eligible Employer receiving tax credits for qualified leave wages \(plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages\) need to include in gross income?](#)"

## **73. Do the tax credits under sections 3131 and 3132 of the Code reduce the amount deductible as federal employment taxes on an Eligible Employer's income tax return? (added June 11, 2021)**



Generally, an employer's payment of certain federal employment taxes is deductible by the employer as an ordinary and necessary business expense in the taxable year that these taxes are paid or incurred, and the amount deductible is generally reduced by credits allowed. Although the tax credits under sections 3131 and 3132 of the Code are allowed against the Eligible Employer's portion of the Medicare tax, the credits are treated as government payments to the Eligible Employer that must be included in the Eligible Employer's gross income. If the Eligible Employer is otherwise eligible to deduct its portion of the Medicare tax and social security tax on all wages, the proper amount deductible by the Eligible Employer is the amount of these taxes before reduction by the tax credits.

**74. Does a governmental employer that is not entitled to receive a credit for qualified leave wages receive credits for the employer's share of social security and Medicare tax on paid leave wages it provides under the ARP? (added June 11, 2021)**

No. A Federal government employer (or agency or instrumentality thereof) that is not an organization described in section 501(c)(1) of the Code is not an Eligible Employer and is not entitled to receive tax credits for providing qualified leave wages under sections 3131 and 3132, including for the employer's share of social security or Medicare tax paid on the leave wages.

**75. Does a governmental employer entitled to the tax credit for providing qualified leave wages receive a credit for the health care expenses allocable to the qualified leave wages? (added June 11, 2021)**

Yes. Governmental employers that are Eligible Employers may increase the tax credits they receive for providing qualified leave wages by any qualified health plan expenses that are allocable to the qualified leave wages that they provide.

Note: Tribal governments that provide paid sick and family leave that would have met the requirements of the EPSLA and Expanded FMLA, as amended for purposes of the ARP, are eligible to claim the tax credits for qualified leave wages, including for any qualified health plan expenses and collectively bargained contributions allocable to the qualified leave wages, assuming they are otherwise Eligible Employers.

For more information, see "[What is an Eligible Employer?](#)"

## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Special Issues for Employers — Interaction of the American Rescue Plan Act of 2021 Tax Credits with Other Tax Credits

**76. May an Eligible Employer receive both the tax credits for qualified leave wages under sections 3131 and 3132 of the Code and the employee retention credit under the CARES Act, or under section 3134 of the Code? (added June 11, 2021)**

Yes, but the Eligible Employer may not benefit from both paid leave tax credits and the employee retention tax credits with respect to the same wages.

For the second quarter of 2021, to the extent an Eligible Employer receives the employee retention credit under section 2301 of the CARES Act on the same wages that are qualified leave wages for purposes of sections 3131 and 3132 of the Code, the Eligible Employer must reduce the tax credit for qualified leave wages by the portion of the credit allowed under section 2301 of the CARES Act which is attributable to the same wages.



For the third quarter of 2021, any qualified leave wages Eligible Employers take into account for purposes of the paid leave credits under sections 3131 and 3132 of the Code may not be taken into account for purposes of the employee retention credit under section 3134 of the Code.

For guidance on the employee retention credit as it applies to qualified wages paid after March 12, 2020, and before January 1, 2021, see [Notice 2021-20](#) PDF. For guidance on the employee retention credit as it applies to qualified wages paid after December 31, 2020 and before July 1, 2021, see [Notice 2021-23](#) PDF. Additional guidance will be issued on the employee retention credit as it applies to qualified wages paid after June 30, 2021, and before January 1, 2021.

**77. May an Eligible Employer receive both the tax credits for qualified leave wages under sections 3131 and 3132 of the Code and the tax credits under sections 45A, 45P, 45S, and 51 of the Code? (added June 11, 2021)**

Yes, but not for the same wages. That is, for purposes of determining the tax credits for qualified leave wages under sections 3131 and 3132 of the Code an Eligible Employer may not take into account any wages taken into account under sections 45A (Indian Employment Credit), 45P (Employer Wage Credit For Employees Who Are Active Duty Members Of The Uniformed Services), 45S (Employer Credit For Paid Family And Medical Leave), or 51 (Work Opportunity Credit) of the Code.

**78. May an Eligible Employer receive both the tax credits for qualified leave wages under sections 3131 and 3132 of the Code and the Credit for Increasing Research Activities under section 41 of the Code? (added June 11, 2021)**

Yes, but the tax credits for qualified leave wages under sections 3131 and 3132 of the Code are reduced by the amount of the tax credit allowed under section 41 of the Code with respect to wages taken into account for determining the credit under section 41 of the Code and the qualified leave wages.

**79. May an Eligible Employer receive both the tax credits for qualified leave wages under sections 3131 and 3132 of the Code and forgiveness for a loan under the Paycheck Protection Program? (added June 11, 2021)**

Yes, but not for the same wages. That is, an Eligible Employer may not receive tax credits for wages that are taken into account as payroll costs in connection with obtaining forgiveness of the Paycheck Protection Program loan ("PPP loan"). However, to the extent any qualified leave wages are payroll costs under a PPP loan that is not forgiven under either section 7(a)(37)(J) or section 7A of the Small Business Act, an Eligible Employer may claim the tax credits under sections 3131 or 3132 of the Code for the wages.

For more information on the PPP loan, see [Paycheck Protection Program](#).

**80. May an Eligible Employer receive both the tax credits for qualified leave wages under sections 3131 and 3132 of the Code and a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act? (added June 11, 2021)**

Yes, but not for the same wages. That is, an Eligible Employer may not claim the tax credits for qualified leave wages under sections 3131 and 3132 of the Code for wages taken into account as payroll costs in connection with a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act.

**81. May an employer receive both the tax credits for qualified leave wages under sections 3131 and 3132 of the Code and a restaurant revitalization grant under section 5003 of the ARP? (added June 11, 2021)**



Yes, but not for the same wages. That is, an employer may not claim the tax credits for qualified leave wages under sections 3131 and 3132 of the Code for wages taken into account as payroll costs in connection with a restaurant revitalization grant under section 5003 of the ARP.

**82. May an Eligible Employer receive tax credits under the ARP for paid sick or paid family leave provided pursuant to a federal, state, or local law? (added June 11, 2021)**

Yes, provided that the leave would have satisfied the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP. That is, sections 3131(c) and 3132(c) of the Code define "qualified sick leave wages" and "qualified family leave wages" as wages paid by an Eligible Employer that would have satisfied the requirements of the EPSLA, or Expanded FMLA, as amended by the ARP, as if the Acts applied after March 31, 2021. Therefore, if an Eligible Employer pays wages mandated by a federal, state, or local law for leave that otherwise satisfies the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP, the Eligible Employer is entitled to claim tax credits under the ARP for those wages.

## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Special Issues for Employers — Use of Third-Party Payers

**83. Can a common law employer that is an Eligible Employer that uses a third-party to report and pay employment taxes to the IRS get the paid sick and family leave credits? (added June 11, 2021)**

Yes. A common law employer that is an Eligible Employer is entitled to the credits regardless of whether it uses a third-party payer (such as a reporting agent, payroll service provider, PEO, CPEO, or section 3504 agent) to report and pay its federal employment taxes. The third-party payer is not entitled to the tax credits with respect to the wages it remits on the common law employer's behalf (regardless of whether the third-party is considered an "employer" for other purposes of the Code). If a common law employer uses a third-party to file, report, and pay employment taxes, different rules will apply depending on the type of third-party payer the common law employer uses for claiming/reporting the paid sick and family leave credits.

If a common law employer is an Eligible Employer that uses a reporting agent to file its federal employment tax returns, the reporting agent will need to reflect the tax credits for qualified leave wages on the federal employment tax returns it files on the common law employer's behalf.

If a common law employer is an Eligible Employer that uses a CPEO or a section 3504 agent that received its designation as an agent by submitting [Form 2678, Employer/Payer Appointment of Agent](#) PDF, to report its federal employment taxes on an aggregate [Form 941, Employer's Quarterly Federal Tax Return](#) PDF, the CPEO or section 3504 agent will report the tax credits for qualified leave wages on its aggregate Form 941 and [Schedule R, Allocation Schedule for Aggregate Form 941 Filers](#) PDF, that it already files. A common law employer that is an Eligible Employer can submit its own [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF to claim the advance credit. If it does so, the common law employer will need to provide a copy of the Form 7200 to the CPEO or section 3504 agent so the CPEO or section 3504 agent can properly report the paid sick and family leave credits on the Form 941.

If a common law employer is an Eligible Employer that uses a non-certified PEO or other third-party payer (other than a CPEO or section 3504 agent that submitted Form 2678) that reports and pays the common law employer's federal employment taxes under the third-party's Employer Identification Number (EIN), the PEO or other third-party payer will need to report the tax credits for qualified leave wages on an aggregate Form 941 and separately report the tax credits



for qualified leave wages allocable to the common law employers for which it is filing the aggregate Form 941 on an accompanying Schedule R. The PEO or other third-party payer does not have to complete Schedule R with respect any common law employer for which it is not claiming tax credits for qualified leave wages. The common law employer will need to provide a copy of any Form 7200 that it submitted for an advance payment of the credit to the PEO or other third-party payer so the PEO or other third-party payer can properly report the tax credits for qualified leave wages on the Form 941. These rules are similar to the rules that apply with respect to the payroll tax election available under section 41(h) of the Code for the credit for certain research and development expenses

#### **84. May a payroll reporting agent sign and submit Form 7200 on behalf of a client employer? (added June 11, 2021)**

Yes. A payroll reporting agent may sign [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF for a client employer for which it has the authority, via [Form 8655, Reporting Agent Authorization](#) PDF, to sign and file the federal employment tax return. The signatory must be the Principal or Responsible Official listed on the reporting agent's e-file application. The signatory may sign with ink on paper or may use an alternative signature method (rubber stamp, mechanical device, or computer software program; for details and required documentation, see [Rev. Proc. 2005-39](#) PDF, 2005-28 I.R.B. 82). Consistent with [Rev. Proc. 2005-39](#) PDF, an alternative signature must be in the form of a facsimile signature.

The signatory for the reporting agent must sign, date, and print the signatory's name in the relevant boxes on Form 7200. In the box, "Printed Title," the signatory must include the reporting agent company name or name of business as it appeared on line 9 of the Form 8655. If the reporting agent company name or name of business from the Form 8655 is missing, the Form 7200 cannot be processed.

The reporting agent must obtain written authorization from the client employer (paper, fax, or e-mail) to perform these actions regarding the Form 7200. The reporting agent need not submit that authorization to the IRS but should retain it in its files so that the reporting agent can furnish it to the IRS upon request.

For a client employer for which a third-party does not have a Reporting Agent Authorization, the third-party may complete and print the Form 7200, or it may provide the client employer a means to complete and print the form, but the client employer will have to sign it.

#### **85. What information must third-party payers obtain from their client employers to claim the paid sick and family leave credits on their client employer's behalf? (added June 11, 2021)**

If a third-party payer (CPEO, PEO, or section 3504 agent) is claiming the paid sick and family leave credits on behalf of the client employer, it must collect from the client employer any information necessary to accurately claim the credit on its client employer's behalf. This includes obtaining information with respect to the client employer's claims for credits under section 45S the Code and the employee retention credit under section 2301 of the CARES Act or section 3134 of the Code. For more information on the information needed to claim the paid sick and family leave credits, see "[What additional records should an Eligible Employer maintain to substantiate eligibility for the paid sick leave or paid family leave credit?](#)"

#### **86. When should the name and EIN of a third-party payer be included on Form 7200? (added June 11, 2021)**

Common law employers who file [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF to claim an advance payment of credits are required to include on the form the name and EIN of any third-party payer they use to file their federal employment tax returns (such as the [Form 941, Employer's Quarterly Federal Tax Return](#) PDF) if the third-party payer uses its own EIN on the federal employment tax returns. This will ensure advance payment of the



credits received by the common law employer is properly reconciled to the federal employment tax return filed by the third-party payer for the calendar quarter for which the advance payment of the credits is received.

To help expedite and ensure proper processing of Form 7200 and reconciliation of advance payment of the credits to the federal employment tax return for the calendar quarter, only those third-party payers who will file a federal employment tax return on behalf of a common law employer using the third-party payer's name and EIN should be listed on the Form 7200. Typically, CPEOs, PEOs, and other section 3504 agents fall into this category of third-party payers.

If a third-party payer will file the federal employment tax return on a common law employer's behalf using the common law employer's name and EIN and not the name and EIN of the third-party payer, the common law employer should not include the name and EIN of the third-party payer on the Form 7200. Typically, reporting agents and payroll service providers fall into this category of third-party payers.

### **87. If a common law employer uses a third-party payer for only a portion of its workforce, should it list the third-party payer on the Form 7200? (added June 11, 2021)**

In some cases, a common law employer may use the services of a third-party payer (such as a CPEO, PEO, or other section 3504 agent) to pay wages for only a portion of its workforce. In those circumstances, the third-party payer files a federal employment tax return for the wages it paid to the common law employer's employees under its name and EIN, and the common law employer files a federal employment tax return for wages it paid directly to employees under its own name and EIN.

If the common law employer is claiming advance payments of credits for both wages paid directly to employees that will be reported on its own federal employment tax return and wages paid to other employees by a third-party payer that will be reported on the third-party payer's federal employment tax return, two separate [Forms 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF should be filed: one for the wages paid by the common law employer with the name and EIN of the common law employer, and one for the wages paid by the third-party payer with the name and EIN of both the common law employer and the third-party payer.

To help expedite and ensure proper processing of Form 7200 and reconciliation of advance payment of the credits to the federal employment tax return when a common law employer uses a third-party payer such as a CPEO, PEO, or other section 3504 agent for only a portion of their workforce, a common law employer should include the name and EIN of the third-party payer only on the Form 7200 for advance payment of the credits for wages paid by the third-party payer and reported on the third-party payer's federal employment tax return. The common law employer should not include the name and EIN of the third-party payer on the Form 7200 for advance payments of the credits claimed for wages paid by the common law employer and reported on the common law employer's federal employment tax return.

See also "[If a common law employer that is an Eligible Employer uses a third-party payer for only a portion of its workforce, should the employer list the third-party payer on the Form 7200?](#)" earlier in these FAQs.

### **88. What information must third-party payers obtain from their client employers to claim the paid sick and family leave credits on their client's behalf? (added June 11, 2021)**

If a third-party payer (such as a CPEO, PEO, or other section 3504 agent) is claiming the paid sick and family leave credits on behalf of the client employer, it must collect from the client employer any information necessary to accurately claim the paid sick and family leave credits on its client employer's behalf. The client employer and the third-party payer will



each be liable for employment taxes that are due as a result of any improper claim of the paid sick and family leave credits. This liability will be determined in accordance with liability under the Internal Revenue Code and applicable regulations for the employment taxes reported on the federal employment tax return filed by the third-party payer on which the credits were claimed.

**89. Must third-party payers obtain records from their client employers to substantiate the client employer's eligibility for the paid sick and family leave credits? (added June 11, 2021)**

If a third-party payer is claiming the paid sick and family leave credits on behalf of the client employer, it must, at the IRS's request, be able to obtain from the client employer and provide to the IRS records that substantiate the client employer's eligibility for the paid sick and family leave credits. Records substantiating the client employer's eligibility for the paid sick and family leave credits must be maintained, either by the third-party payer or the client employer. A client employer, or a third-party payer that is claiming the credit on behalf of a client, must, at the IRS's request, provide to the IRS records that substantiate eligibility for the credit. The premium payee and the third-party payer will be liable for employment taxes that are due as a result of any improper claim of credits in accordance with their liability under the Code and applicable regulations for the employment taxes reported on the federal employment tax return filed by the third-party payer on which the credits were claimed.

**90. Are client employers responsible for avoiding a "double benefit" with respect to the paid sick and family leave credits and the credit under sections 45A, 45P, 45S, 51, and 3134 of the Code, as well as section 2301 of the CARES Act? (added June 11, 2021)**

Yes. The client employer is responsible for avoiding a "double benefit" with respect to the paid sick and family leave credits and the credit under sections 45A, 45P, 45S, 51, and 3134 of the Code, as well as section 2301 of the CARES Act. The client employer cannot use wages that were used to claim the paid sick and family leave credits, and reported by the third-party payer on the client employer's behalf, to claim credits under the sections 45A, 45P, 45S, 51, or 3134 of the Code, as well as section 2301 of the CARES Act.

## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Special Issues for Employers — Other Issues

**91. Can employees make salary reduction contributions from the amounts paid as qualified leave wages for their employer sponsored health plan, a 401(k) or other retirement plan, or any other benefits? (added June 11, 2021)**

Sections 3131 and 3132 of the Code do not distinguish qualified leave wages from other wages an employee may receive from the employee's standpoint as a taxpayer; thus, the same rules that generally apply to an employee's regular wages (or compensation, for Railroad Retirement Tax Act purposes) would apply from the employee's standpoint. To the extent that an employee has a salary reduction agreement in place with the Eligible Employer, sections 3131 and 3132 of the Code do not include any provisions that explicitly prohibit taking salary reduction contributions for any plan from qualified sick leave wages or qualified family leave wages.

**92. May an Eligible Employer increase the tax credit for its share of social security or Medicare tax by taking into account amounts contributed on a pretax basis to a cafeteria plan under section 125 of the Code? (added June 11, 2021)**

No. An Eligible Employer may claim a tax credit under sections 3131 and 3132 of the Code only for those payments that are qualified leave wages, which must be either 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) or 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) plus allocable qualified health plan expenses and certain collectively bargained contributions. Section 3133(a) of the Code increases this tax credit by the employer's share of social security and Medicare tax imposed on these qualified leave wages. However, amounts contributed on a pretax basis to a plan that meets the requirements of section 125 of the Code do not constitute wages or compensation. See [Publication 15-B, Employers' Tax Guide to Fringe Benefits](#) PDF, for more information. Accordingly, those amounts are not qualified leave wages and, if they are not allocable qualified health plan expenses, the employer may not claim a tax credit for those amounts under section 3131 or 3132 of the Code.

**93. If the amount of paid sick leave or paid family leave an Eligible Employer pays to an employee is exempt from social security and Medicare taxes, can the Eligible Employer still claim the tax credit for paying that amount to the employee? (added June 11, 2021)**

It depends. The tax credit for providing paid sick leave or paid family leave is allowed for qualified leave wages paid to employees. An amount must constitute wages (as defined in section 3121(a) of the Code for social security and Medicare tax purposes, determined without regard to the exclusions from employment under section 3121(b)(1)-(22) of the Code) or compensation (as defined in section 3231(e) of the Code, determined without regard to the exclusions under section 3231(e)(1) of the Code) in order to be qualified leave wages.

**Example 1:** A church in State X employs an ordained minister; the minister is a common law employee of the church. The church pays the ordained minister sick leave for periods during which he is unable to work because he is experiencing symptoms of COVID-19 and seeking a medical diagnosis. Although the minister's salary and parsonage allowance are not subject to social security and Medicare taxes because they are not considered as being provided for "employment" under section 3121(b)(8) of the Code, the payment is nonetheless a wage as defined in section 3121(a) of the Code when disregarding the exclusion in section 3121(b)(8) of the Code. Therefore, the paid sick leave is qualified leave wages for which the church may claim tax credits under section 3131 or section 3132 of the Code.

**Example 2:** A licensed real estate agent at Brokerage Firm Y receives substantially all of her payments for services directly related to home sales and performs services under a written contract providing that she will not be treated as an employee for federal tax purposes. Therefore, the licensed real estate agent at Brokerage Firm Y is treated as a statutory nonemployee under the Code. Brokerage Firm Y pays the agent sick leave for periods during which she is unable to work because she has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. Amounts paid to the agent by Brokerage Firm Y do not constitute wages within the meaning of section 3121(a) of the Code. Therefore, the paid sick leave is not qualified leave wages for which Brokerage Firm Y may claim tax credits under section 3131 or section 3132 of the Code.

**Example 3:** Employer Z provides its employees with, and the employees make, pre-tax salary reduction contributions to or for, a qualified 401(k) plan, a fully-insured group health plan, a dependent care assistance program satisfying the requirements of section 129 of the Code, and qualified transportation benefits satisfying the requirements of section 132(f) of the Code. Employer Z also makes matching and nonelective contributions to the qualified 401(k) plan and pays for the remaining portion of the cost of maintaining the fully-insured group health plan.

Employer Z may treat as qualified leave wages the amounts its employees contribute as pre-tax salary reduction contributions to the qualified 401(k) plan because those amounts are wages within the meaning of section 3121(a) of the Code. Employer Z may also treat all amounts paid toward maintaining the fully-insured group health plan (including any employee pre-tax salary reduction contribution) as allocable qualified health plan expenses. See "[Does the amount](#)



[of qualified health plan expenses include both the portion of the cost paid by the Eligible Employer and the portion of the cost paid by the employee?"](#)

Employer Z may not treat as qualified leave wages the amounts Employer Z contributes as matching or nonelective contributions to the qualified 401(k) plan, nor may it treat as qualified leave wages any employee pre-tax salary reduction contributions toward the dependent care assistance program or qualified transportation benefits. These amounts do not constitute wages within the meaning of section 3121(a) of the Code and are not allocable qualified health plan expenses or certain collectively bargained contributions; therefore, these amounts are not qualified leave wages under section 3131 or section 3132 of the Code.

#### **94. How do Eligible Employers report the amount of qualified leave wages paid to employees? (added June 11, 2021)**

Eligible Employers must report the amount of qualified leave wages paid to employees for paid leave that would have satisfied the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP, on [Form W-2, Wage and Tax Statement](#) PDF, either in Box 14, or in a statement provided with the Form W-2. For the 2021 Form W-2, Eligible Employers must report qualified leave wages paid in 2021.

For more information, including optional language that Eligible Employers may use in the Form W-2 instructions for employees, see [Notice 2020-54](#) PDF.

#### **95. Does an Eligible Employer need to report qualified leave wages in Box 14 (or a separate statement) of the Form W-2 if those amounts are not "wages" due to an exclusion from "employment" under section 3121(b) of the Code or "compensation" under section 3231(e)(1) of the Code? (added June 11, 2021)**

Yes. Section 9642(e)(2) of the ARP reduces the qualified sick leave equivalent amount for which a self-employed individual may claim a tax credit to the extent that the sum of the qualified sick leave equivalent amount described in section 9642(c) of the ARP and any amounts described in section 3131(b)(1) of the Code exceeds the applicable thresholds under section 5102(a) of the EPSLA, as amended for purposes of the ARP. Similarly, section 9643(e)(2) of the ARP reduces the qualified family leave equivalent amount for which a self-employed individual may claim a tax credit to the extent that the sum of the qualified family leave amount described in section 9643(c) of the ARP and any amounts described in section 3132(b)(1) of the Code exceeds \$12,000.

Sections 3131(b)(1) and 3132(b)(1) of the Code describe the amounts of qualified sick leave wages and qualified family wages taken into account for purposes of the employer payroll tax credits for paid sick leave and paid family leave, respectively. Qualified 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).

Therefore, Eligible Employers will determine the amount to report in Box 14 of the [Form W-2, Wage and Tax Statement](#) PDF without regard to the exclusions from employment under section 3121(b)(1)-(22) of the Code and without regard to the exclusions from compensation under section 3231(e)(1) of the Code.

#### **96. Is an Eligible Employer that does not claim the tax credits for qualified leave wages required to report the sick leave and family leave wages paid to employees on Form W-2, either in Box 14 or in a statement provided with the Form W-2? (added June 11, 2021)**



No. If an Eligible Employer does not claim the tax credits for qualified leave wages, it will be treated as having elected under sections 3131(f)(4) and 3132(f)(4) of the Code not to take those qualified leave wages into account for purposes of sections 3131 and 3132 of the Code. Accordingly, the sick leave wages and family leave wages it pays to employees do not have to be reported to employees in Box 14 of [Form W-2, Wage and Tax Statement](#) PDF, or in a statement provided with Form W-2.

**97. Are United States governmental employers that are not permitted under the ARP to claim the tax credits for qualified leave wages required to report sick leave and family leave wages paid to employees on Form W-2, either in Box 14 or in a statement provided with the Form W-2?**

No. The government of the United States or any agency or instrumentality thereof (not including any organization described in section 501(c)(1) and exempt from tax under section 501(a) of the Code) (federal governmental employers) are not permitted to claim the tax credits under sections 3131 and 3132 of the Code. Because federal governmental employers cannot claim the tax credits, any sick leave wages and family leave wages paid to employees are not considered qualified leave wages under the ARP. Therefore, those wages do not have to be reported to employees in Box 14 of [Form W-2, Wage and Tax Statement](#) PDF, or in a statement provided with Form W-2.

This rule does not apply to the government of any State or political subdivision thereof, any agency or instrumentality of those governments, Tribal governments, or federal government employers described in section 501(c)(1) and exempt from tax under section 501(a) of the Code that are Eligible Employers permitted to claim the tax credits for sick leave wages and family leave wages paid to employees.

**98. Is an Eligible Employer that did not claim the tax credits for qualified leave wages but reported sick leave or family leave wages in 2020 in Box 14 of Form W-2 or in a separate statement required to furnish a Form W-2c? (added June 11, 2021)**

Yes. If an Eligible Employer that did not claim the tax credits for qualified leave wages reported the sick leave wages or family leave wages paid to employees in Box 14 of [Form W-2, Wage and Tax Statement](#) PDF, or in a statement provided with [Form W-2](#) PDF, the Eligible Employer must either furnish a [Form W-2c, Corrected Wage and Tax Statement](#) PDF or provide a corrected statement to employees correcting the erroneous reporting. However, the Eligible Employer should not file Form W-2c with the SSA solely to correct the amount in Box 14.

**98a. Is an Eligible Employer that claims the tax credits for qualified leave wages paid after December 31, 2021, for leave taken by an employee in 2021 required to furnish to the employee a Form W-2c to correct the amount of sick leave and family leave wages reported in Box 14 of the employee's 2021 Form W-2? (added March 3, 2022)**

Yes. If an Eligible Employer reports sick leave or family leave wages paid after December 31, 2021, for leave taken by an employee after March 31, 2021, and before October 1, 2021, and claims a credit for those sick and family leave wages, the Eligible Employer must either (1) furnish to the employee a Form W-2c, Corrected Wage and Tax Statement, correcting the employee's 2021 Form W-2, Wage and Tax Statement by reporting the corrected amounts of sick leave and family leave wages (to include the qualified leave wages paid after December 31, 2021) in Box 14, or (2) provide a corrected statement to the employee correcting the prior reporting.

The Eligible Employer should not file a Form W-2c with the SSA solely to correct the amount in Box 14.

**99. Should Eligible Employers withhold federal employment taxes on qualified leave wages paid to employees? (added June 11, 2021)**



Yes. Qualified leave wages are wages subject to withholding of federal income tax and the employees' share of social security and Medicare taxes, unless those wages or compensation are described in the exclusions from employment under section 3121(b)(1)-(22) or in the exclusions from compensation under section 3231(e)(1) of the Code, respectively. Qualified leave wages are also considered wages for purposes of other benefits that the Eligible Employer provides, such as contributions to 401(k) plans.

### **100. Is a tax-exempt employer eligible for the tax credit as an Eligible Employer? (added June 11, 2021)**

Yes. Sections 3131 and 3132 of the Code entitle Eligible Employers that pay qualified sick leave wages and qualified family leave wages to refundable tax credits. Qualified sick leave wages and qualified family leave wages are those wages for paid sick leave and paid family leave that are paid for leave that would have satisfied the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP. Tax-exempt organizations that provide that paid sick leave or paid family leave may claim the tax credits.

### **101. Can an employer choose not to claim the tax credits? (added June 11, 2021)**

Yes. An employer is not required to claim the tax credits even if it is an Eligible Employer. An Eligible Employer that does not claim the tax credits for qualified leave wages under sections 3131 or 3132 of the Code is treated as having elected under sections 3131(f)(4) and 3132(f)(4) of the Code not to take those qualified leave wages into account for purposes of sections 3131 and 3132 of the Code.

### **102. Can an Eligible Employer receive tax credits for providing paid leave that an employee is entitled to under the Eligible Employer's policy? (added June 11, 2021)**

Yes, provided that the leave would have satisfied the requirements of the EPSLA or Expanded FMLA, as amended for purposes of ARP. That is, sections 3131(c) and 3132(c) of the Code define "qualified sick leave wages" and "qualified family leave wages" as wages or compensation paid by an Eligible Employer which would have satisfied the requirements of the EPSLA, or Expanded FMLA, as amended for purposes of the ARP. Therefore, if an Eligible Employer pays wages or compensation for leave pursuant to its own policy that satisfies the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP, the Eligible Employer is entitled to claim tax credits under the ARP for those wages.

## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Special Issues for Employees

### **103. Are qualified sick leave wages and qualified family leave wages taxable to employees? (added June 11, 2021)**

Yes, generally. Under sections 3131(f)(2) and 3132(f)(2) of the Code, qualified 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), so the employee must pay social security and Medicare taxes (and for railroad employees, Tier II of the Railroad Retirement Tax Act tax), unless the qualified leave wages are subject to an exclusion from employment under section 3121(b)(1)-(22) of the Code or exclusions from compensation under section 3231(e)(1) of the Code. In addition, wages are generally compensation for services subject to income tax under section 61 of the Code and federal income tax withholding under section 3402 of the Code unless



an exception applies. Sections 3131 and 3132 of the Code do not include an exception for qualified leave wages from income.

**104. Are qualified sick leave wages and qualified family leave wages excluded from gross income as "qualified disaster relief payments"? (added June 11, 2021)**

No. Section 139 of the Code excludes from a taxpayer's gross income certain payments to individuals to reimburse or pay for expenses related to a qualified disaster ("qualified disaster relief payments"). Although the COVID-19 outbreak is a "qualified disaster" for purposes of section 139 of the Code (see below), qualified leave wages are not excludible qualified disaster relief payments, because qualified leave wages are intended to replace wages or compensation that an individual would otherwise earn, rather than to serve as payments to offset any particular expenses that an individual would incur due to COVID-19.

Section 139(c)(2) of the Code provides that for purposes of section 139 of the Code, the term "qualified disaster" includes a federally declared disaster, as defined by 165(i)(5)(A) of the Code. The COVID-19 pandemic is a "federally declared disaster," as defined by section 165(i)(5)(A) of the Code. On March 13, 2020, the President of the United States issued a Proclamation declaring a national emergency concerning the Novel Coronavirus Disease (COVID-19) outbreak, stating that the ongoing COVID-19 pandemic warrants an emergency determination under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 – 5207. A "qualified disaster relief payment" is defined by section 139(b) of the Code to include any amount paid to or for the benefit of an individual to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster. Qualified disaster relief payments do not include income replacements such as sick leave or other paid time off paid by an employer.

**105. Can an employee receive both "qualified sick leave wages" and "qualified family leave wages"? (added June 11, 2021)**

Yes, but at different times. Section 3131 of the Code provides that wages taken into account for determining the paid sick leave credit will not be taken into account for determining the paid family leave credit allowed under section 3132 of the Code. Similarly, section 3132 of the Code provides that wages taken into account for determining the paid family leave credit will not be taken into account for determining the paid sick leave credit allowed under section 3131 of the Code.

## Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Specific Provisions Related to Self-Employed Individuals

**106. Who is an eligible self-employed individual for purposes of the qualified sick leave equivalent credit and the qualified family leave equivalent credit? (added June 11, 2021)**

An eligible self-employed individual is defined as an individual who regularly carries on any trade or business within the meaning of section 1402 of the Code, and would be eligible to receive qualified sick leave wages or qualified family leave wages that would have satisfied the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP, if the individual were an employee of an Eligible Employer (other than the self-employed individual) that would have been subject to the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP.



Eligible self-employed individuals are allowed a credit against their federal income taxes for any taxable year equal to their "qualified sick leave equivalent amount" or "qualified family leave equivalent amount."

**107. Which individuals regularly carry on a trade or business for purposes of being an eligible self-employed individual for the qualified sick leave equivalent credit and the qualified family leave equivalent credit? (added June 11, 2021)**

An individual regularly carries on a trade or business for purposes of being an eligible self-employed individual for the qualified sick leave equivalent credit and/or the qualified family leave equivalent credit if the individual carries on a trade or business within the meaning of section 1402 of the Code, or is a partner in a partnership carrying on a trade or business within the meaning of section 1402 of the Code. Section 1402(c) of the Code defines trade or business and includes exceptions to this standard for purposes of section 1402 of the Code.

**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.

**109. How is the "average daily self-employment income" for an eligible self-employed individual calculated? (added June 11, 2021)**

Average daily self-employment income is an amount equal to the net earnings from self-employment for the taxable year, or prior taxable year, divided by 260. A taxpayer's net earnings from self-employment are based on the gross income that the individual derives from the taxpayer's trade or business minus ordinary and necessary trade or business expenses.

**110. How is the "qualified family leave equivalent amount" for an eligible self-employed individual calculated? (added June 11, 2021)**

During the second and third quarters of 2021, the qualified family leave equivalent amount with respect to an eligible self-employed individual is an amount equal to the number of days (up to 60) that the self-employed individual cannot perform services for which that individual would be entitled to paid family leave (if the individual were employed by an Eligible Employer (other than the self-employed individual)), multiplied by the lesser of two amounts: (1) \$200, or (2) 67 percent of the average daily self-employment income of the individual for the taxable year, or the prior taxable year.

**111. Can a self-employed individual receive both qualified sick or family leave wages and qualified sick or family leave equivalent amounts? (added June 11, 2021)**

Yes, but the qualified sick or family leave equivalent amounts are reduced by the qualified sick or family leave wages.

That is, if a self-employed individual is entitled to a refundable credit for a qualified sick leave equivalent amount under 9642(a) of the ARP, and also receives qualified sick leave wages as an employee, section 9642(e)(2) of the ARP reduces the qualified sick leave equivalent amount for which the self-employed individual may claim a tax credit to the extent that the sum of the qualified sick leave equivalent amount described in section 9642(c) of the ARP and any qualified sick leave wages under section 3131(b)(1) of the Code, exceeds \$2,000 (or \$5,110 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the EPSLA, as amended for purposes of the ARP).

Similarly, if a self-employed individual is entitled to a refundable credit for a qualified family leave equivalent amount under section 9643(a) of the ARP, and also receives qualified family leave wages as an employee, section 9643(e)(3) of the ARP reduces the qualified family leave equivalent amount for which the self-employed individual may claim a tax credit to the extent that the sum of the qualified family leave equivalent amount described in section 9643(c) of the ARP and the qualified family leave wages under section 3132(b)(1) of the Code, exceeds \$12,000.



**Example:** In her capacity as an employee, Taxpayer A receives \$4,000 in qualified sick leave wages, comprised of:

- \$3,000 in qualified sick leave wages for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA, as amended for purposes of the ARP; and
- \$1,000 in qualified sick leave wages for reasons described in paragraphs (4), (5), or (6) of the EPSLA, as amended for purposes of the ARP.

In addition, in her capacity as a self-employed individual, Taxpayer A is eligible for a \$3,300 qualified sick leave equivalent credit comprised of:

- \$2,500 in qualified sick leave equivalent credits for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA, as amended for purposes of the ARP; and
- \$800 in qualified sick leave equivalent credits for reasons described in paragraphs (4), (5), or (6) of section 5102(a) of the EPSLA, as amended for purposes of the ARP.

Taxpayer A must reduce the \$3,300 qualified sick leave equivalent credit for which she is eligible by \$2,190, which is comprised of:

- the excess of the qualified sick leave wages and qualified sick leave equivalent amounts for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA over \$5,110 (that is, \$390); plus
- the excess of the qualified sick leave wages and qualified sick leave equivalent amounts for reasons described in paragraphs (4), (5), or (6) of section 5102(a) of the EPSLA over \$2,000 (that is, \$0); plus
- the remaining excess of the total leave credits to which Taxpayer A is entitled in her capacity as either an employee or a self-employed individual over \$5,110 (that is, \$1,800).

Accordingly, Taxpayer A may claim a qualified sick leave equivalent credit of \$1,110.

**Example:** In his capacity as an employee, Taxpayer B receives \$8,000 in qualified family leave wages. In addition, in his capacity as a self-employed individual, Taxpayer B is eligible for a \$4,500 qualified family leave equivalent credit. Taxpayer B may claim a qualified family leave equivalent credit of \$4,000, because he must reduce the qualified family leave equivalent amount to which he is entitled to the extent that the sum of the qualified family leave equivalent amount and his qualified family leave wages (that is, \$12,500) exceeds \$12,000 (that is, \$500).

**112. Do self-employed individuals need to account for wages excluded under section 3121(b)(1)-(22) of the Code, or compensation excluded under section 3231(e)(1) of the Code, when determining the amount by which to reduce their self-employed equivalent leave credit? (added June 11, 2021)**

Yes. Section 9642(e)(2) of the ARP reduces the qualified sick leave equivalent amount for which a self-employed individual may claim a tax credit to the extent that the sum of the qualified sick leave equivalent amount described in section 9642(c) of the ARP and any amounts described in section 3131(b)(1) of the Code exceeds the applicable thresholds under section 5102(a) of the EPSLA, as amended for purposes of the ARP. Similarly, section 9643(e)(2) of the ARP reduces the qualified family leave equivalent amount for which a self-employed individual may claim a tax credit to the extent that the sum of the qualified family leave amount described in section 9643(c) of the ARP and any amounts described in section 3132(b)(1) of the Code exceeds \$12,000.



Sections 3131(b)(1) and 3132(b)(1) of the Code describe the amounts of qualified sick leave wages and qualified family leave wages taken into account for purposes of the employer payroll tax credits for paid sick leave and paid family leave, respectively. Section 3131(c) and (f)(2) and section 3132(c) and (f)(2) of the Code define these qualified leave wages as 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).

Therefore, when determining the amount by which to reduce their self-employed equivalent credits, self-employed individuals should account for wages excluded under section 3121(b)(1)-(22) of the Code or compensation excluded under section 3231(e)(1) of the Code.

### **113. Do self-employed taxpayers need to account for sick leave and/or family leave wages reported by United States government employers on Form W-2,, either in Box 14 or in a statement provided with the Form W-2? (added June 11, 2021)**

No. Generally, federal governmental employers are not eligible to claim the tax credits under sections 3131 and 3132 of the Code. Accordingly, any sick leave wages and family leave wages paid by a federal governmental employer are not taken into account to reduce the self-employed taxpayer's self-employment equivalent credits on [Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals](#) PDF. If a federal governmental employer reports the sick leave wages or family leave wages in Box 14 of [Form W-2, Wage and Tax Statement](#) PDF or a separate statement with Form W-2, the self-employed person should not take these reported leave wages into account when determining the amount by which to reduce his or her self-employment equivalent credits.

This rule does not apply to the government of any State or political subdivision thereof, any agency or instrumentality of those governments, Tribal governments, or federal government employers described in section 501(c)(1) and exempt from tax under section 501(a) of the Code that are Eligible Employers permitted to claim the tax credits for sick leave wages and family leave wages paid to employees.

### **114. How does a self-employed individual claim the credits for qualified sick leave equivalent amounts or qualified family leave equivalent amounts? (added June 11, 2021)**

The refundable credits are claimed on the self-employed individual's [Form 1040, U.S. Individual Income Tax Return](#) PDF.

### **115. How does a self-employed individual determine the sick and family leave equivalent tax credit that the individual may claim? (added June 11, 2021)**

A self-employed individual will determine the paid sick and family leave equivalent tax credit to which the individual is entitled by completing [Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals](#) PDF. This form is available at [irs.gov](http://irs.gov). To complete the Form 7202, self-employed individuals who are also employees will need any amount of qualified sick and family leave wages that their employers reported on the [Form W-2, Wage and Tax Statement](#) PDF. For more information on the requirement for Eligible Employers to report the amount of qualified sick and family leave wages paid to employees on Form W-2, see [Special Issues for Employers: Other Issues](#) and [Notice 2020-54](#) PDF.

### **116. How does a self-employed individual elect to use prior year net earnings from self-employment income to determine average daily self-employment income for purposes of the credits for qualified sick leave equivalent amounts or qualified family leave equivalent amounts? (added June 11, 2021)**



A self-employed individual may elect to use prior year (rather than current year) net earnings from self-employment to determine his or her average daily self-employment income by indicating this election when filing their 2020 or 2021 [Form 1040, U.S. Individual Income Tax Return](#) PDF. See applicable instructions for the form for more information.

**116a. If a self-employed individual who claimed the self-employed equivalent leave credit receives a Form W-2c from an employer reporting corrected qualified sick and/or family leave wages received for the period beginning April 1, 2021, and ending September 30, 2021, should the individual file an amended tax return? (added March 3, 2022)**

It depends. If a self-employed individual who claimed the qualified leave equivalent credits for qualified sick and/or family leave equivalent amounts for the period beginning April 1, 2021, and ending September 30, 2021, receives a Form W-2c, Corrected Wage and Tax Statement, reporting corrected amounts of sick and/or family leave wages in Box 14 (or receives a corrected statement) for this period, the individual must recalculate the credit on the 2021 Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals. If the amount of the qualified leave equivalent credit has changed from the amount claimed on the individual's 2021 Form 1040, U.S. Individual Income Tax Return, the individual must file a Form 1040-X, Amended U.S. Individual Income Tax Return, for 2021 with the corrected amounts from the Form 7202.

**117. How can a self-employed individual cover the individual's qualified sick leave equivalent and qualified family leave equivalent amounts before filing his or her Form 1040? (added June 11, 2021)**

The self-employed individual may cover sick leave and family leave equivalents by taking into account the credit to which the individual is entitled and will claim on [Form 1040, U.S. Individual Income Tax Return](#) PDF, in determining required estimated tax payments. This means that a self-employed individual can effectively reduce payments of estimated income taxes that the individual would otherwise be required to make if the individual was not entitled to the credit on the Form 1040.

**118. Can an independent contractor who generally performs services for multiple clients as a nonemployee claim the tax credit with regard to the lost services due to COVID-19? (added June 11, 2021)**

Yes. If an individual is an independent contractor who generally performs services for multiple clients as a nonemployee, the individual is self-employed and is eligible for the tax credits for days the individual is not able to work for reasons related to COVID-19.

For more information on whether an individual is an independent contractor or an employee, and the tax consequences of either status, see [Self-Employed Individuals Tax Center](#).

**119. Can a partner in a partnership claim the tax credits? (added June 11, 2021)**

Maybe. A partner in a partnership is a self-employed individual if the partner's distributive share constitutes net earnings from self-employment or if the partner receives guaranteed payments for services. If the partner is a self-employed individual and is not able to work for reasons related to COVID-19, the partner is eligible for the tax credits.

Generally, partners in a partnership (including members of a limited liability company (LLC) that is treated as a partnership for federal tax purposes) are considered to be self-employed, not employees, when performing services for the partnership.



**120. Can a self-employed individual use the Form 7200 to apply for an advance of the tax credits? (added June 11, 2021)**

No. [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#) PDF, is only available for employers that file [Form 941, Employer's Quarterly Federal Tax Return](#) PDF, or certain other employment tax returns. However, a self-employed individual may reduce payments of estimated income taxes equal to the credit to which the individual is entitled.

For more information about how a self-employed individual can reduce estimated income taxes to cover a credit for qualified sick leave equivalent amounts and qualified family leave equivalent amounts, see "How can a self-employed individual cover the individual's qualified sick leave equivalent and qualified family leave equivalent amounts before filing his or her Form 1040?"

**121. Does an eligible self-employed individual who is allowed a credit under section 9642 of the ARP for the qualified sick leave equivalent amount or a credit under section 9643 of the ARP for the qualified family leave equivalent amount include any amount of these credits in gross income? (added June 11, 2021)**

No, the amount of the credits allowed under sections 9642 and 9643 of the ARP are not included in the gross income of the eligible self-employed individual.

**122. How should a self-employed individual substantiate eligibility for tax credits for qualified leave wage equivalents? (added June 11, 2021)**

Self-employed individuals should maintain documentation establishing their eligibility for the credits as a self-employed individual. That documentation should be similar to the documentation that employers claiming the credits for qualified leave wages under sections 3131 and 3132 of the Code should maintain. See "[How Should an Eligible Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?](#)".

**123. May a nonresident alien (NRA) claim the self-employed equivalent credits under sections 9642 and 9643 of the ARP? (added June 11, 2021)**

Yes. The qualified sick leave equivalent credits and qualified family leave equivalent credits under sections 9642 and 9643 of the ARP, respectively, are available to NRAs who otherwise meet the requirements to claim the tax credits. That is, an individual's status as an NRA does not preclude the individual from claiming the tax credits if the individual both (1) regularly carries on a trade or business within the meaning of section 1402 of the Code, and (2) would be eligible for paid leave that would have satisfied the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP, if the individual was an employee of an Eligible Employer (other than the self-employed individual).