

## The American Rescue Plan and Paid Leave: What Employers Need to Know

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On March 10, 2021, Congress passed the American Rescue Plan Act of 2021. President Biden is expected to sign the Act into law by March 14, 2021. Employers are rightfully eager to learn whether the Act extends the Families First Coronavirus Response Act (the “FFCRA”). The short answer is “no, but your voluntary policies should be updated.” The longer answer is below.

As explained in a prior post, employer obligations under the FFCRA expired on December 31, 2020. While employers were subsequently not obligated to provide FFCRA-eligible leave, Congress extended the tax credit for employers who **voluntarily** continued to provide such paid leave through March 31, 2021.

The Act does not resurrect the FFCRA or impose upon employers an obligation to provide paid leave for COVID-19 related reasons. However, the legislation extends the tax credit for voluntary provision of leave through September 30, 2021. The tax credit, however, is not available to government entities.

In addition, employers must be aware that the legislation:

- Provides that the tax credits are available for paid sick leave for three additional following qualifying reasons:
  1. the employee is obtaining a COVID-19 vaccination;
  2. the employee is recovering from any injury, disability, illness or condition related to such vaccination; and



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3. the employee is seeking or awaiting the results of a diagnostic test or medical diagnosis for COVID-19 as requested by the employer.
- Adds a non-discrimination provision designed to encourage the uniform application of COVID-19 paid leave across an employer's workforce. Specifically, the provision provides that the tax credit is not available if the employer – in determining the availability of paid leave – discriminates in favor of highly compensated employees, full-time employees, or employees on the basis of their tenure with the employer.
  - Re-sets the 10-day count for paid sick leave beginning April 1, 2021. Accordingly, employers are eligible for a tax credit if they voluntarily provide employees an additional 10 days of FFCRA sick leave beginning on April 1, 2021.

In light of the above, employers who elect to voluntarily provide paid leave should review and update their related policies to incorporate the new provisions and ensure that the application of voluntary leave does not violate the non-discrimination provision.

In addition, while the Act does not extend the obligation of employers to provide paid COVID-related leave, employers must continue to watch for additional legislation regarding such leave from both the federal and state governments. Indeed, we are closely monitoring proposed legislation in Massachusetts that could impose new paid leave requirements on employers.