



LEHR MIDDLEBROOKS
VREELAND & THOMPSON, P.C.

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AMERICAN RESCUE PLAN ACT SET FOR PRESIDENTIAL SIGNATURE

The U.S. House of Representatives voted today to pass the American Rescue Plan Act of 2021 as passed by the Senate on March 6, 2021. Passage was by party line vote, with one Democrat representative crossing over to vote no. President Biden has indicated that he is eager to sign the bill. The Bill differs from an earlier version passed by the House in that some provisions were eliminated for procedural reasons and some provisions were modified to secure the votes of the more conservative Democrats in the Senate. The Senate narrowly passed that version by a 50-49 party line vote.

What's in the bill (that's relevant for employers)

- Families First Coronavirus Response Act leaves extended on a voluntary basis through September 30, 2021. ***Please read the below carefully as the changes to the terms of EFMLA are significant, and we believe most employers will choose not to extend this leave. The below changes will take effect with respect to EFMLA and EPSL leaves between April 1, 2021, and September 30, 2021.***
 - Employers are not required to provide Emergency Paid Sick Leave or Emergency Family Medical Leave but may “opt in” and receive credits for qualifying payments.
 - If provided, EPSL may be used for the original six reasons¹ and:

¹ (1) Employee is subject to an isolation or quarantine order related to COVID-19; (2) employee advised by health care provider to self-quarantine; (3) employee experiencing symptoms of COVID-19 and seeking diagnosis; (4) employee caring for an individual under an isolation/quarantine order or medical advice; (5) employee caring for a child due to school closure or loss of childcare; (6) some other reason if designated in the future by the Secretary of HHS.

- An employee seeking or awaiting a COVID-19 diagnosis after exposure or after the employer's request that the employee be tested;
 - An employee obtaining COVID-19 immunization or recovering from adverse reaction of immunization.
 - The new reasons are covered at the 100% wage rate, up to \$511/day.
- If provided, EPSL (80 hours for full time employees, prorated for part-time) entitlement resets on March 31, 2021.
- If provided, EFMLA can be used for school closure/childcare loss (as in the original Families First Coronavirus Response Act) and:
 - ***All reasons for which EPSL leave may be granted.*** (See footnote 1). This is a tremendous addition because EFMLA is a 12-week entitlement and was previously limited to use only for school closures or loss of childcare.
 - An employee seeking or awaiting a COVID-19 diagnosis after exposure or after the employer's request that the employee be tested.
 - An employee obtaining COVID-19 immunization or recovering from adverse reaction to immunization.
- Eliminates first 10 days of EFMLA being unpaid. Raises EFMLA credit limit up to \$12,000 from \$10,000 in the aggregate; retains daily limit of \$200.
- Unlike EPSL, EFMLA entitlement would not automatically renew on April 1, 2021.
- Adds a nondiscrimination rule invalidating the tax credit if employer discriminates in favor of highly compensated employees, full time employees, or longer tenured employees. This appears redundant to us as our read on the prior voluntary extension was that an employer could receive the tax credit only if it acted as though it were still generally bound by the rules of the Act.

- Extends Pandemic Unemployment Assistance (covers gig workers and independent contractors who typically can't receive unemployment benefits) and Pandemic Emergency Unemployment Compensation (extends additional weeks of unemployment benefits) programs through September 6, 2021.
 - Those receiving unemployment benefits get a supplemental \$300 week.
- Employee Retention Credit (from CARES) extended through end of 2021.

What's not in the bill (again, that's relevant for employers)

- The \$15/hour minimum wage plan that was inserted in the House's version of the bill was struck by the Senate parliamentarian as an inappropriate addition under the rules for budget bills. Several Democratic legislators have vowed that we'll see this proposal again.

We've revised our [model forms](#), [sample policies](#), and [instruction letter](#) on using those forms for those employers choosing to extend either the EPSL or EFMLA through Fall 2021. We do encourage you to revisit these links closer to April 1, 2021, when the amendments take effect, as our current drafts are in advance of DOL or IRS guidance on the effects the above changes will have on leave administration.

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