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IRS PUBLISHES FIRST REGULATORY EXPANSION OF REASONS EMPLOYEES MAY SEEK EPSL OR EFMLA

The IRS along with the Secretaries of HHS and DOL identified accompanying an individual to vaccination and caring for an individual after vaccination as conditions to which EPSL and EFMLA apply. [While employers are no longer required to provide EPSL or EFMLA leaves, the American Rescue Plan Act \(ARPA\) gave employers the choice to provide either, both, or neither of these leaves voluntarily while continuing to claim a tax credit for these leaves.](#) Based on the feedback we received from clients, most employers elected to discontinue both leaves, though some have continued to provide EPSL.

You may recall that there were originally six reasons for EPSL leave, and that the sixth reason was any “substantially similar condition specified by the Secretary of HHS in consultation with the Secretary of the Treasury and the Secretary of Labor.” ARPA added that an employee could use EPSL leave to obtain their own vaccination or to recover from a vaccination’s side effects. ARPA also extended all the EPSL-authorized reasons for leave to the EFMLA (which had previously been available only for COVID-related school closures and other childcare losses).

On July 29, the IRS announced that the requisite Secretaries had designated two additional conditions as qualifying for EPSL and EFMLA leaves:

- 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.

See *Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021*, [FAQ #25](#) and [#36](#).

Therefore, any employer continuing the EPSL and/or EFMLA programs under the extension option provided by the American Rescue Plan Act should incorporate these reasons into their [policies](#) and [forms](#). (Our updated instruction letter on the use of these model forms is [here](#)).

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