

# Employers Encouraged to Provide PTO for Vaccinations

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On April 21, 2021, President Biden issued an announcement to encourage all employers to offer paid time off for employees to schedule vaccinations and recover from any side effects. This announcement highlights and reinforces the provisions of the American Rescue Plan Act ("ARPA") and includes:

- A Tax Credit for Small- and Medium-sized Businesses (under 500 employees) to Fully Offset the Cost of Emergency Paid Sick Leave (EPSL) for Employees to Get Vaccinated and Recover from Any Side Effects of Vaccination.
  - This tax credit is voluntary. Employers that voluntarily choose to allow employees to take EPSL on and after April 1, 2021, can obtain reimbursement through a tax credit.
  - This tax credit is part of the FFCRA expansion and extension that occurred under ARPA and is available through September 30, 2021.
  - The credit for EPSL is for up to 80 hours (i.e., 10 workdays) of EPSL per employee and up to \$511 per day of EPSL provided between April 1 and September 30, 2021.
  - EPSL may be taken for, among other specific COVID-19 related reasons, an employee's need for leave to receive COVID-19 vaccinations and/or to recover from any side effects of vaccination.
- If an employer chooses to continue offering EPSL on and after April 1, 2021, EPSL taken by an employee prior to April 1, 2021, will not count towards the 80 hours of EPSL employees can take on and after April 1, 2021.
- Employers can also choose to continue offering emergency paid FMLA (EFMLA) on and after April 1, 2021, through September 1, 2021, to employees who are not able to work or telework because their children's school or daycare is closed for COVID-19-related reasons. Employers that choose to do so can obtain reimbursement through a tax credit.
- A Call for Employers – Large and Small – to Take Additional Steps to Help Get Their Employees and Communities Vaccinated.
  - The President is encouraging all employers to use their unique resources to educate, encourage and incentivize their employees to get vaccinated. The announcement suggests employers could include discounts for vaccinated individuals or offer product giveaways.
  - Employers who have decided not to offer EPSL on and after April 1, 2021, can still choose to provide their employees with additional PTO in order to get vaccinated. It is unclear at this time whether

or not an employer that offers additional PTO for vaccination only and not for the other reasons specified under EPSL will be eligible for the tax credit.

## ■ Tax Credits Under the American Rescue Plan

Along with this announcement, the IRS released a Fact Sheet explaining how small and medium-sized employers that voluntarily provide EPSL may claim the tax credit that is an offset against the employer's share of the Medicare tax.

- The tax credit for paid sick leave wages is equal to the EPSL paid for COVID-19 related reasons for up to two weeks (80 hours), limited to \$511 per day and \$5,110 in the aggregate, at 100 percent of the employee's regular rate of pay.
- The tax credit for paid family leave wages is equal to the family leave wages paid for up to twelve weeks, limited to \$200 per day and \$12,000 in the aggregate, at 2/3rds of the employee's regular rate of pay.

In anticipation of claiming the credits on the Form 941, Employer's Quarterly Federal Tax Return, eligible employers can keep 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 eligible employer's share of social security and Medicare taxes with respect to all employees up to the amount of credit for which they are eligible. The Form 941 instructions explain how to reflect the reduced liabilities for the quarter related to the deposit schedule. If an eligible employer does not have enough federal employment taxes set aside to cover amounts provided as EPSL or EFMLA, the employer may request an advance of the credits using Form 7200, Advance Payment of Employer Credits Due to COVID-19.

## ■ Employer Action

Employers with less than 500 employees who were not voluntarily offering an extension of EPSL may wish to reconsider their position to help encourage employee vaccination.

Employers should work with counsel and tax advisors to determine appropriate leave policies and to effectively claim any tax credits available.