

Eye on Washington Regulatory Update



Reporting of FFCRA Wages on 2021 Forms W-2

On September 7, 2021, the Internal Revenue Service (IRS) issued [Notice 2021-53](#), "Guidance on Reporting Qualified Sick Leave Wages and Qualified Family Leave Wages Paid For Leave Provided in 2021." This notice provides details and model language for use in reporting qualified sick and family leave wages paid either in Box 14 of Form W-2, or on a separate statement. This reporting provides employees, who are also self-employed, with information to claim qualified sick or family leave credits.

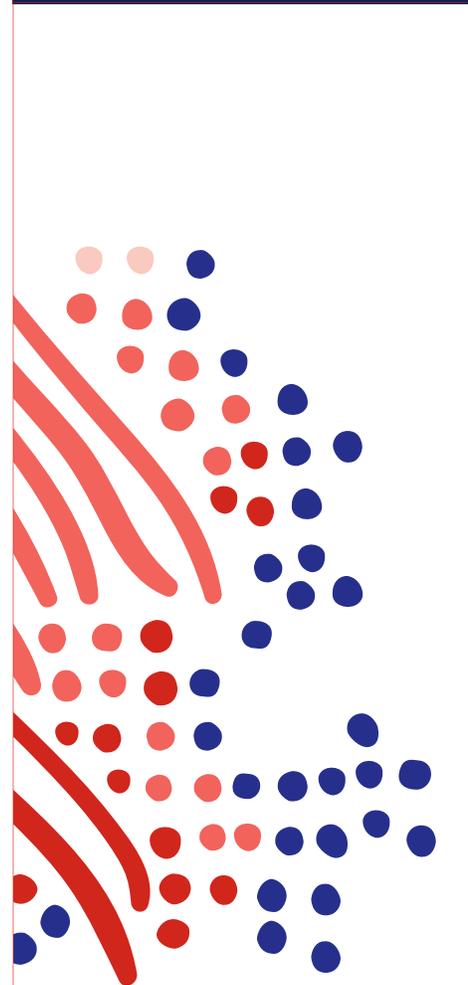
In 2020, and for the first 3 months of 2021, there were up to three separate types of qualified paid sick or family leave wages that were separately reported (if applicable) in Box 14 of Form W-2. Because the qualified sick and family leave limits were reset by the American Rescue Plan Act (ARPA), P. L. 117-2, (March 11, 2021), for 2021 there are now up to six entries for qualified paid sick or family leave wages to be separately reported, if applicable.

These reporting requirements are only applicable if the employer takes the related tax credits. The tax credits are only available if an eligible employer complies with all aspects of the Families First Coronavirus Response Act (FFCRA). In other words, an employer could offer paid leave to employees that is similar in intent and coverage, but if the employer is either ineligible or does not comply with all aspects of the FFCRA — or simply chooses not to take the related tax credits — then such payments would simply be treated as regular wages, and no Form W-2 reporting (or separate statement) would be necessary.

Background

The Families First Coronavirus Response Act, P. L. 116-127, generally required employers with fewer than 500 employees to provide paid leave due to circumstances related to the COVID-19 pandemic, from April through December of 2020. The FFCRA provided refundable tax credits to such employers to reimburse them for the cost of providing qualified leave wages. Employees were eligible for paid leave if the employee was unable to work on-site or telework because the employee:

- (1) Was subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- (2) Had been advised by a health-care provider to self-quarantine due to concerns related to COVID-19;
- (3) Experienced symptoms of COVID-19 and was seeking a medical diagnosis;
- (4) Was caring for an individual who was subject to a quarantine order related to COVID-19, or had been advised by a health-care provider to self-quarantine due to concerns related to COVID-19;



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- (5) Was caring for a son or daughter of such employee, if the school or place of care of the son or daughter had been closed, or the child-care provider of such son or daughter was unavailable, due to COVID-19; or
- (6) Was experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Under the FFCRA, an employee who was unable to work or telework for reasons related to COVID-19 described in items (1), (2), or (3) above was entitled to paid sick leave up to \$511 per day and \$5,110 in the aggregate. An employee who was unable to work or telework for reasons related to COVID-19 described in items (4), (5), or (6) above was entitled to paid sick leave at two-thirds the employee's regular rate of pay, up to \$200 per day and \$2,000 in the aggregate.

The requirement to provide this leave expired after December 31, 2020. However, employers that offer qualified leave in accordance with the FFCRA still qualify for tax credits to reimburse the cost of such leave. The ARPA extended the availability of the credits for paid leave through September 30, 2021.

In July 2020, the IRS issued [Notice 2020-54](#), which provided guidance regarding Form W-2 reporting of qualified sick leave and family leave taken in 2020. This reporting was intended to provide employees who were also self-employed in 2020 with information to claim any FFCRA sick or family leave credits with respect to self-employment — that is, tax credit amounts with respect to self-employment were limited by any amounts paid by an employer.

2020 Limits Continue to Apply to 2021 Payments Made Through March 2021

On December 27, 2020, the Consolidated Appropriations Act (CAA) extended the refundable payroll tax credits for Emergency Paid Sick Leave (EPSL) and Emergency Paid Family Leave (EPFL), enacted in the FFCRA, through March 31, 2021. For employers who were subject to the FFCRA and

choose to voluntarily continue to provide qualified sick and family leave payments to their employees in 2021, FFCRA extended the 100% tax credit for payments for qualifying leave taken through March 31, 2021.

For 2021, tax credits are only available for paid sick leave due to the inability to work or telework related to COVID-19 described in (1), (2), or (3) above in limited amounts; i.e., \$5,110 in the aggregate, covering April 1, 2020, through March 31, 2021.

Similarly, tax credits are only available for paid sick leave for reasons related to COVID-19 described in (4), (5), or (6) above in limited amounts — that is, up to \$2,000 in the aggregate. Because the sick leave wage cap was not increased from January 1 through March 31, 2021, no more than \$5,110 (or \$2,000 for absences described in (4), (5), and (6) above) in the aggregate may be claimed by an employer with respect to leave provided to an employee during that period.

Tax credits are also available for qualified family leave wages paid from January 1, 2021, through March 31, 2021, if eligible employers provide employees with up to 10 weeks of paid family leave (=up to \$200 per day and \$10,000 in the aggregate from April 1, 2020 through March 31, 2021).

New Qualified Leave Limits for April Through September 2021

Generally, the ARPA reset or increased the dollar limits for the tax credits that could be taken for qualified sick and family leave beginning April 1, 2021, through September 30, 2021. Certain eligibility and amounts of qualified leave provided under the categories referenced above were modified from the original FFCRA. For example, for leave provided beginning April 1, 2021, through September 30, 2021, the limit for qualified family leave wages was increased to \$12,000 in aggregate (See IRS Notice 2021-53 for details.)

Because two sets of limits may apply to the three different types of qualified leave payments made in 2021 (i.e., payments made for leave taken through March 31, 2021, and

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for leave taken after March 31, 2021 but before October 1, 2021), the IRS will require as many as six entries within Box 14 of Form W-2 (or within a separate statement).

Reporting Requirements

Self-employed individuals are also eligible for a refundable tax credit for qualified sick and family leave amounts. If a self-employed individual is eligible for a refundable credit for FFCRA sick leave and also receives qualified sick leave wages as an employee, the credit amount for the self-employed individual is reduced.

To provide self-employed individuals, who also receive wages as employees with the information they need to properly claim any qualified sick or family leave credits for which they may be eligible, IRS Notice 2021-53 requires that employers report to employees the amount of qualified sick and family leave wages paid.

These amounts must be separately reported either in Box 14 of Form W-2 or on a separate statement, with the following descriptions (or similar language):

- Sick leave wages subject to the \$511 per day limit paid for leave taken after December 31, 2020, and before April 1, 2021.
- Sick leave wages subject to the \$200 per day limit paid for leave taken after December 31, 2020, and before April 1, 2021.
- Family leave wages paid for leave taken after December 31, 2020, and before April 1, 2021.
- Sick leave wages subject to the \$511 per day limit paid for leave taken after March 31, 2021, and before October 1, 2021.
- Sick leave wages subject to the \$200 per day limit paid for leave taken after March 31, 2021, and before October 1, 2021.
- Emergency family leave wages paid for leave taken after March 31, 2021, and before October 1, 2021.

If a separate statement is provided and the employee receives a paper Form W-2, the statement must be included along with the Form W-2 sent to the employee. If the employee receives an electronic Form W-2, then the statement must be provided in the same manner and at the same time as the Form W-2.

Model Language for Employee Instructions

As part of the Instructions for Employee, under the instructions for Box 14 of Form W-2, or in a separate statement sent to the employee, the employer may provide additional information about qualified sick and family leave wages, and explain that these wages may limit the amount of credits to which the employee may be entitled to with respect to any self-employment income. The following model language (modified as necessary) may be used:

"Included in Box 14, if applicable, are amounts paid to you as qualified sick leave wages or qualified family leave wages under the Families First Coronavirus Response Act and/or Sections 3131 and 3132 of the Internal Revenue Code. Specifically, up to six types of paid qualified sick leave wages or qualified family leave wages may be reported in Box 14:

- Sick leave wages subject to the \$511 per day limit paid for leave taken after December 31, 2020, and before April 1, 2021, because of care you required.
- Sick leave wages subject to the \$200 per day limit paid for leave taken after December 31, 2020, and before April 1, 2021, because of care you provided to another.
- Emergency family leave wages paid for leave taken after December 31, 2020, and before April 1, 2021.
- Sick leave wages subject to the \$511 per day limit paid for leave taken after March 31, 2021, and before October 1, 2021, because of care you required.

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- Sick leave wages subject to the \$200 per day limit paid for leave taken after March 31, 2021, and before October 1, 2021, because of care you provided to another.
- Emergency family leave wages paid for leave taken after March 31, 2021, and before October 1, 2021.

If you have self-employment income in addition to wages paid by your employer, and you intend to claim any qualified sick leave or qualified family leave equivalent credits, you must report the qualified sick leave or qualified family leave wages on Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals, included with your federal income tax return, and may have to reduce (but not below zero) any qualified sick leave or qualified family leave equivalent credits by the amount of these qualified leave wages. If you have self-employment income, you should refer to the instructions for your individual income tax return for more information."

For additional information, see IRS [Notice 2021-53](#).

ADP Compliance Resources

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