HR *Matters*

New Paid Leaves for COVID-19 Cases and Vaccine Seekers

March 31 at 11:00 am

Meet today's panelists

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Shuttered Venue Operators Grant

Shuttered Venue Operators Grant

- Established by Congress to help theaters, performing arts organizations, music venues, and some museums who have been forced to close during the COVID-19 pandemic

- Eligible applicants may qualify for grants equal to 45% of their gross earned revenue, with the maximum amount available for a single grant award of $10 million. $2 billion is specifically reserved for small business applicants with up to 50 full-time employees.

- Applicant who received a PPP loan on or after December 27, 2020, will have the SVOG reduced by the PPP loan amount.

Shuttered Venue Operators Grant

- Applications open up on April 8th and prioritize entities that have suffered a 90% or greater revenue loss between April 2020 and December 2020.

- Grant money can be used for:
  - Payroll Costs
  - Rent or Mortgage Payments
  - Utility Payments
  - Scheduled Debt Payments
  - Insurance Payments
  - Ordinary and Necessary Business Expenses Including Maintenance
  - State and Local Taxes

Employee Retention Credit (ERC)

ERC (Employee Retention Credit)

Time Periods Covered by Each Act

- CARES Act: Wages paid between March 13, 2020 through Dec. 31, 2020.
- CAA: Wages paid between Jan. 1, 2021 through June 30, 2021.
- ARPA: Wages paid between July 1, 2021 through Dec. 31, 2021.

ERC (Employee Retention Credit)

Amount of Credit

CARES Act: 50% of the qualified wages paid to the employee, plus the cost to provide health benefits to the employee.

CAA: Effective Jan. 1, 2021, the credit amount is increased to 70% of qualified wages, which includes the cost to continue providing health benefits.

ARPA: Retains 70% credit for qualified wages paid between July 1, 2021 and Dec. 31, 2021, which includes the cost to provide health benefits.

Eligibility Requirements for the Credit

CARES Act: For wages paid when business operations that are either fully or partially suspended by a COVID-19 lockdown order; or, for any quarter in 2020, if gross receipts are less than 50% of gross receipts for the same quarter in 2019.

CAA: Effective Jan. 1, 2021, for wages paid when business operations that are either fully or partially suspended by a COVID-19 lockdown order; or, for any quarter in 2021, if gross receipts are less than 80% of gross receipts compared to the same quarter in 2019. There is an election to use the prior quarter's gross receipts for purposes of determining if the company's gross receipts were less than 80% of gross receipts compared to the same quarter in 2019.

ARPA: Same as CAA but provides two changes. First, the election to use the prior quarter's gross receipts for purposes of determining if the company's gross receipts were less than 80% of gross receipts compared to the same quarter in 2019 is extended to the third and fourth quarters of 2021. Under this election, a company could use its second quarter 2021 gross receipts compared to its second quarter 2019 gross receipts to determine credit eligibility for the third quarter, and could use its third quarter 2021 gross receipts to determine credit eligibility for the fourth quarter 2021.

Maximum Credit Amount

CARES Act: The credit is capped at $5,000 for all qualified wages paid between March 13, 2020, and Dec. 31, 2020 (the credit amount allowed for $10,000 in qualified wages × 50% credit rate).

CAA: The credit rate cap is increased to $7,000 per quarter for qualified wages paid between Jan. 1, 2021, and June 30, 2021 (the credit for $10,000 in qualified wages × 70%).

ARPA: The credit continues to be capped at $7,000 per quarter for qualified wages paid between July 1, 2021, and Dec. 31, 2021.

Credit Eligibility Whether or Not an Employee is Working

CARES Act: For a company that had more than 100 Full time employees in 2019, no credit is available for wages paid to an employee performing services for the employer (either teleworking, or working at the workplace, even though at reduced capacity due to reduction in business). To determine this 100-employee threshold, the employees of all affiliated companies sharing more the 50% common ownership are aggregated. On the other hand, a company that had 100 or less employees in 2019 is eligible for the credit, even if its employees were working.

CAA: Effective Jan. 1, 2021, this threshold was raised to a company that had more than 500 employees in 2019, so that for the first two quarters of 2021, a company that had 500 or fewer employees in 2019 will be eligible for the credit, even if its employees are working. The same aggregation rules to include employees of related companies sharing more than 50% common ownership under the CARES Act remain in effect.

Credit Eligibility Whether or Not an Employee is Working

ARPA: Continues the 500-employee threshold as in CAA, but adds a new category, a Severely Financially Distressed Employer (SFDE). This is a company whose gross receipts for the quarter are less than 10% of gross receipts for the same quarter in 2019 (i.e., a reduction in gross receipts of more than 90%). A SFDE is allowed the credit if its employees are performing services, even if it had more than 500 employees in 2019. This would potentially apply to companies in severely distressed industries, such as the cruise, hospitality, and entertainment industries. Because the effective date of ARPA is July 1, 2021, however, a SFDE will only be eligible to claim the credit for the second two quarters of 2021. Furthermore, because of the election to allow a company to calculate credit eligibility by testing gross receipts for the prior quarter, a company could use its second quarter 2021 gross receipts compared to its second quarter 2019 gross receipts to determine whether it qualifies as an SFDE (and use third quarter 2021 gross receipts to test whether it qualifies as an SFDE for the fourth quarter).

Paycheck Protection Program (PPP) Loans

CARES Act: Under the original credit rule, a company that received a PPP loan was not eligible to claim the employee retention tax credit.

CAA: The credit prohibition for PPP borrowers was repealed retroactively and allowed the credit for wages that were not paid with the proceeds of a PPP loan. Conversely, the credit is not allowed for wages paid with the proceeds of a PPP loan.

ARPA: Same as CAA, but also adds that the credit is not allowed for wages paid with the proceeds of entertainment venue grants or restaurant revitalization grants.

PPP2 Application Extension

President Biden on Tuesday signed an extension for the popular Paycheck Protection Program (PPP), which was created last year to help small businesses weather the economic fallout from the coronavirus pandemic.

The deadline to apply for a PPP loan has been extended from March 31 to May 31, and the law extends authorization of loans to June 30 to give the Small Business Administration additional time to process applications.

Families First Coronavirus Response Act (FFCRA)

April 1-September 30, 2021
Per ARPA

FFCRA paid leaves continue!

The American Rescue Plan Act (ARPA) allows employers to be reimbursed for wages missed due to COVID-19.

April 1 – September 30, 2021

The paid leaves are NOT mandated but are a viable option if you have employees who *should/need to* be out of the office due to COVID-19.

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Remember…

OSHA's General Duty Clause states:

"Employers have the responsibility to provide a safe and healthful workplace that is free from serious recognized hazards."

This includes deadly viruses. Using FFCRA paid leaves helps you too.

ARPA-Era FFCRA Paid Leaves

- April 1 – September 30
- Optional (not federally mandated as they were in 2020) but be consistent!
- Expanded eligibility rules (more on this in a moment)
- Still applies to employers with 500 or fewer employees
- All FT, PT and seasonal employees' bank of hours resets as of April 1

What stays the same?

- Employers with < 500 employees only
- Benefits should continue during paid leaves
- Employers should not discriminate or otherwise retaliate against employees who take paid leave
- Tax credit occurs in real-time via payroll process
- Max amount of tax credit is either $200 or $511 per day for Emergency Paid Sick Leave (EPSL), depending on qualifying reason
- Max amount of tax credit is $200 per day for Emergency FMLA (EFMLA)
- Allow employees to use before PTO

What changes?

EPSL

- As of April 1, employees can take EPSL to get the COVID-19 vaccine and to recover from any side effects.
- Employees can take EPSL when seeking or waiting for a COVID-19 diagnosis or test result if they've been exposed to COVID-19 or if the employer has asked them to get a diagnosis or test.
- All employees are eligible for a new bank of leave on April 1. Full-time employees get 80 hours; part-time employees get a prorated amount.
- Employers can't provide EPSL in a manner that favors highly compensated employees or full-time employees or that discriminates based on how long employees have worked for the employer.

What changes?

EFMLA

- Now be used for *any EPSL reason*, in addition to the original childcare reasons. This includes vaccine reasons.
- The 10-day unpaid waiting period has been eliminated. Now 12 full weeks.
- Max reimbursable tax credit increased to $12,000 (from $10,000).
- The law isn't clear as to whether employees are entitled to a ***new*** 12-week bank of EFMLA. Awaiting guidance. It is possible that an employee will be entitled to additional *unpaid* protected time off.

What changes?

EFMLA, *continued*

- Employers MAY NOT provide EFMLA in a manner that favors highly compensated employees or full-time employees or that is based on how long employees have worked for the employer. (Again, be aware that any inconsistencies in the granting of leave could potentially lead to a discrimination claim.)

- Allow employees to use EFMLA before using PTO if they want to.

Reasons for Using EPSL and EFMLA

Starting on April 1, employees can take EPSL or EFMLA for the same set of reasons, which is a useful simplification.

The following are acceptable reasons for taking these leaves:

Reasons for Using EPSL and EFMLA

1. When quarantined or isolated subject to federal, state, or local quarantine or isolation order

2. When advised by a health care provider to self-quarantine because of COVID-19

3. When the employee is:

    - Experiencing symptoms of COVID-19 and seeking a medical diagnosis
    - Seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 because they have been exposed or because their employer has requested the test or diagnosis
    - Obtaining a COVID-19 vaccination or recovering from any related injury, disability, illness, or condition

Reasons for Using EPSL and EFMLA

4. When caring for another person who is isolating or quarantining on government or doctor's orders
5. When caring for a child whose school or place of care is closed due to COVID-19

Employees and employers will—in most cases—want to exhaust EPSL first, since it has a higher tax credit, except when used to care for others.

Tax Credit Review

The tax credits available between April 1 and September 30 are the same as under the original FFCRA, except for the increased aggregate cap for EFMLA. Tax credits are available as described below, regardless of how much EPSL or EFMLA an employee used prior to April 1.

- The credit available for **EPSL** when used for reasons 1, 2, or 3 (self-care) is up to 100% of an employee's regular pay, with a limit of $511 per day.
- The credit available for **EPSL** when used for reasons 4 or 5 (care for another) is up to 2/3 of an employee's regular rate of pay, with a limit of $200 per day.
- The credit available for **EFMLA** for any reason is up to 2/3 of an employee's regular pay, with a limit of $200 per day and a cap of $12,000 per employee.

Submit your **questions** now using the Q&A function on your screen

Or submit questions to **questions@dominionpayroll.com**