The Arrival of ARPA: The American Rescue Plan Act of 2021 – Part II

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FFCRA Credit Extension: A Closer Look

As explained in Part 1 of this blog, ARPA extended employer credits under FFCRA by six-months; instead of expiring on March 31, the credits will expire on September 30. That's two more quarters of potential credits for employers. But how do those credits work – as in, limits, taxability, how to claim . . . ? Well, we know that already from 2020 and Q1 2021, don't we? No, we don't, because the rules and the process are changing. Here's the breakdown between the old and the new processes:

FFCRA in 2020 and Q1 2021	FFCRA in Q2 and Q3 2021
Paying leave is mandatory for employers in 2020 and optional in Q1 2021	Paying leave is optional for employers
Paid leave for 3 types of self-care qualifies for credit	Paid leave for **original 3 types & 3 new types** of self-care qualifies for credit
Original types: Employee is in government-mandated quarantine Employee is in health-care-recommended quarantine Employee is symptomatic and awaiting diagnosis	New types: Employee is getting a COVID vaccine Employee is recovering from a reaction to the COVID vaccine Employee is seeking a test/diagnosis per employer's request or after COVID exposure
Credit for paid leave for self-care is up to $5,110 per employee for 2020 and Q1 2021 combined	Credit for paid leave for self-care is up to $5,110 per employee for Q2 and Q3 2021 combined
Paid leave for other care qualifies for credits	Paid leave for other care qualifies for credits (no change)
Credit for paid leave for other care is up to $2,000 per employee for 2020 and Q1 2021 combined	Credit for paid leave for other care is up to $2,000 per employee for Q2 and Q3 2021 combined
Paid leave for 1 type of family need qualifies for credit	Paid leave for **original 1 type & all types of self- and other care qualifies for credit**
Credit for paid family leave is up to $10,000 per employee for 2020 and Q1 2021 combined	Credit for paid family leave is **up to $12,000** per employee for Q2 and Q3 2021 combined (limit is still $200 per day)
Leave payments are exempt from employer Social Security	Leave payments are **taxable for employer Social Security**
Credit is for leave payments, health costs, and employer Medicare on the leave	Credit is for leave payments, health costs, **and employer Social Security** and Medicare paid on the leave
"Nonrefundable" portion of credit is claimed by offsetting leave payments against employer Social Security deposits	"Nonrefundable" portion of credit is claimed by offsetting leave payments **against employer Medicare deposits**
"Refundable" portion of credit is claimed by offsetting leave payments against all other 941 deposits	Pending IRS guidance

Paid leave plans not subject to restrictions	Paid leave plans cannot favor: Highly compensated employees Full-time employees Employees based on tenure If it does, you can't claim the credit

Employee Retention Credit Extension – A Closer Look

As explained in Part 1 of this blog, ARPA extended Employee Retention Credits (ERC) by six-months; instead of expiring on June 30, the credits will expire on December 31. That's two more quarters of potential credits for employers. But similar to FFCRA, the rules and the process are changing. Here's the breakdown between the old and the new processes:

ERC in 2020 and Q1 and Q2 2021	**ERC in Q3 and Q4 2021**
"Nonrefundable" portion of credit is claimed by offsetting leave payments against employer Social Security deposits	"Nonrefundable" portion of credit is claimed by offsetting leave payments **against employer Medicare deposits**
"Refundable" portion of credit is claimed by offsetting leave payments against all other 941 deposits	Pending IRS guidance
ERC wages cannot be claimed as PPP payroll costs	ERC wages cannot be claimed as payroll costs for: PPP Shuttered venues assistance Restaurant revitalization grants (created by ARPA)

Also, here's an important reminder: Under the Consolidated Appropriations Act signed into law by former President Trump on December 27, 2020, advanced ERC credits may only be requested on Form 7200 by employers of less than 500 employees. In addition, the amount of the advanced credit you request by faxing Form 7200 to the IRS can't exceed 70% of your 2019 average quarterly wage. That doesn't mean you'll lose your ERC credits due to these limitations. It just means that you'll have to wait until you file your quarterly Form 941 to get the credits that don't qualify for advance payment via Form 7200.

Additional PPP Funding and Eligibility

ARPA added an additional $7.25 billion to the SBA's PPP funding and extended eligibility to additional non-profit/media entities. But there are no changes to the loan application or forgiveness process.

Whew. The outlook for extending the PPP loan application deadline? The House overwhelmingly passed a bill to extend the deadline from March 31 to May 31. Now we await the Senate.

Increased Educational Assistance Tax-Free Benefit

Before ARPA, employers could establish Dependent Care Assistance Programs (DCAP) for employees with a maximum tax-free benefit of $5,000. ARPA increased that limit for 2021 to $10,500. Time to consider reviewing and revising your DCAP plan – and perhaps allowing employees to increase their annual contribution amount. Be sure to check with your benefits consultant/CPA.

New Restaurant Revitalization Grant

ARPA provided $28.6 billion in funding to the SBA for grants to struggling restaurants. These seem to be outright grants, without a loan and forgiveness process, but of course, we're awaiting SBA guidance and forms. The grant amounts can be used to pay for payroll, food and beverage expenses, paid sick leave, mortgage, rent, utilities, supplies and supplier costs, and maintenance and operating expenses, as well as other essential expenses.

COBRA Refundable Tax Credit

A surprise new credit created by ARPA which hasn't received much publicity is the refundable COBRA credit. That's because this credit only applies to employers with self-insured plans. Qualifying former employees who lost their COBRA coverage during the pandemic due to inability to pay premiums will now be entitled to a tax-free, 100% premium subsidy for 6 months (April 1 through September 30). How does the subsidy work? The former employer (for self-insured plans) or the insurer (for fully-insured plans) will pay the premiums on behalf of the former employee and then be reimbursed by the IRS through a payroll tax credit. The IRS is charged with creating the payroll credit claim procedure, so we're awaiting guidance. Employers must notify all COBRA-eligible employees (current workers) as well as COBRA recipients and their dependents by May 31, 2021. The Department of Labor is expected to issue a model notice. Visit Viventium.com/resources frequently for emerging updates on ARPA and related guidance.

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