



GLO Report – July 2021

Internal Revenue Service:

[Information for enhanced 2021 child and dependent care tax credits; updated paid sick and family leave credits for Q2 and Q3 of 2021](#)

The Internal Revenue Service posted two new, separate sets of frequently-asked-questions (FAQs) to assist families and small and mid-sized employers in claiming credits under the American Rescue Plan (ARP).

Both the child and dependent care credit as well as the paid sick and family leave credit were enhanced under the ARP, enacted in March to assist families and small businesses with the fallout of the COVID-19 pandemic and recovery underway. The two sets of FAQs provide information on eligibility, computing the credit amounts, and how to claim these important tax benefits. An overview of these tax credits follows:

Child and dependent care credit

For 2021, the ARP increased the maximum amount of work-related expenses for qualifying care that may be taken into account in calculating the credit, increased the maximum percentage of those expenses for which the credit may be taken, modified how the credit is reduced for higher earners, and made it refundable.

For 2021, eligible taxpayers can claim qualifying work-related expenses up to:

\$8,000 for one qualifying person, up from \$3,000 in prior years, or
\$16,000 for two or more qualifying persons, up from \$6,000 in prior years.

Taxpayers are also required to have earnings; the amount of qualifying work-related expenses claimed cannot exceed the taxpayer's earnings.

Combined with the increase to 50% in the maximum credit rate, taxpayers with the maximum amount of qualifying work-related expenses would receive a credit of \$4,000 for one qualifying person, or \$8,000 for two or more qualifying persons. When calculating the credit, a taxpayer must subtract employer-provided dependent care benefits, such as those provided through a flexible spending account, from total work-related expenses. A qualifying person generally is a dependent under the age of 13, or a dependent of any age or spouse who is incapable of self-care and who lives with the taxpayer for more than half of the year.

As in prior years, the more a taxpayer earns, the lower the percentage of work-related expenses that are taken into account in determining the credit. However, under the new law, more taxpayers will qualify for the new maximum 50% credit rate. That's because the ARP increased to \$125,000 the adjusted gross income level at which the credit rate starts to be reduced. Above

\$125,000, the 50% credit percentage goes down as income rises. Taxpayers with adjusted gross income over \$438,000 are not eligible for the credit.

The credit is fully refundable for the first time in 2021. This means an eligible taxpayer can receive it, even if they owe no federal income tax. To be eligible for the refundable credit, a taxpayer (or the taxpayer's spouse if filing a joint return) must reside in the United States for more than half of the year. However, special rules apply to military personnel stationed outside of the United States.

To claim the credit for 2021, taxpayers will need to complete Form 2441, Child and Dependent Care Expenses, and include the form when filing their tax returns in 2022. In completing the form to claim the 2021 credit, those claiming the credit will need to provide a valid taxpayer identification number (TIN) for each qualifying person. Generally, this is the Social Security number for the qualifying person. For more information about completing the form and claiming the credit, see the instructions to Form 2441. In addition, those claiming the credit are required to identify all persons or organizations that provided care for the qualifying person. This requires providing the care provider's name, address, and TIN.

Paid sick and family leave credits

The paid sick and family leave credits reimburse eligible employers for the cost of providing paid sick and family leave to their employees for reasons related to COVID-19, including leave taken by employees to receive or recover from COVID-19 vaccinations. Self-employed individuals are eligible for similar tax credits.

The paid sick and family leave tax credits under the ARP are similar to those put in place by the Families First Coronavirus Response Act (FFCRA), as extended and amended by the COVID-related Tax Relief Act of 2020, under which certain employers could receive tax credits for providing paid leave to employees that met the requirements of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act (as added by FFCRA). The ARP amends and extends these credits, and provides that leave wages paid to an employee who is seeking or awaiting the results of a test for, or diagnosis of, COVID-19, or is obtaining immunizations related to COVID-19 or recovering from immunization, are leave wages that can be eligible for the credits. Additionally, under the ARP, eligible employers may now claim the credit for paid family leave wages for all the same reasons that they can claim the credit for paid sick leave wages.

The FAQs include information on how eligible employers may claim the paid sick and family leave credits, including how to file for and compute the applicable credit amounts, and how to receive advance payments for and refunds of the credits. Under the ARP, eligible employers, including businesses and tax-exempt organizations with fewer than 500 employees and certain governmental employers, may claim tax credits for qualified leave wages and certain other wage-related expenses (such as health plan expenses and certain collectively bargained benefits) paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021.

The ARP keeps the daily wage thresholds that previously existed for these credits under the FFCRA. The aggregate cap on qualified sick leave wages remains at two weeks (up to a maximum of 80 hours), and this aggregate cap reset with respect to leave taken by employees beginning on April 1, 2021. The aggregate cap on qualified family leave wages increases to \$12,000 from \$10,000, and this aggregate cap reset with respect to leave taken by employees beginning on April 1, 2021.

The paid leave credits under the ARP are tax credits against the employer's share of Medicare tax. The tax credits are refundable, which means that the employer is entitled to payment of the full amount of the credits to the extent it exceeds the employer's share of Medicare tax.

In anticipation of the credits to be claimed on the applicable federal employment 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 employer's share of social security and Medicare taxes with respect to all employees up to the amount of the credit for which they are eligible. If the eligible employer does not have enough federal employment taxes on deposit to cover the amount of the anticipated credits, the eligible employer may request an advance of the credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19.

Department of Labor:

The DOL announced a [Notice of Proposed Rulemaking](#) to limit the amount of non-tip producing work that a tipped employee can perform when an employer is taking a tip credit. The proposed rule clarifies when an employee is working in a tipped occupation and when a worker has performed such a substantial amount of non-tipped labor that an employer can no longer take a tip credit and must pay the full federal minimum wage to the worker. The Fair Labor Standards Act allows employers with tipped workers to pay as little as \$2.13 per hour in direct wages, while taking a credit against the tips earned by the employee to make up the balance of the federal minimum wage of \$7.25 per hour.

The proposed rule also clarifies that an employer may only take a tip credit when tipped employees perform labor that is part of their tipped occupation. Work considered part of the tipped occupation includes labor that produces tips and labor that directly supports tip-producing work, so long as the employee does not perform it for a substantial amount of time. For example, waiting on tables is an example of labor that produces tips for the worker. Labor that supports a server's tip-producing work includes a server folding napkins or refilling salt and pepper shakers.

The proposed rule also clarifies that if an employee performs work that directly supports tip-producing work for a substantial amount of time – that exceeds 20 percent of all of the hours worked during the employee's workweek or exceeds 30 continuous minutes – that worker is no longer performing labor that is part of the tipped occupation.

The proposal clarifies that employers may not take a tip credit for work that is not part of the tipped occupation.

The department invites comments from the public on the proposed rule at www.regulations.gov. The comment period closes Aug. 23, 2021. For more information, please visit: <https://www.dol.gov/newsroom/releases/whd/whd20210621>

USICE / Department of Homeland Security:

Form I-9 Flexibility Extended to August 31, 2021

On May 26, 2021, the Department of Homeland Security (DHS) and the U.S. Immigration and Customs Enforcement (ICE) announced an extension of the flexibility in complying with requirements related to Form I-9, Employment Eligibility Verification, due to COVID-19. This temporary guidance was set to expire May 31, 2021, but because of ongoing precautions related to COVID-19, DHS extended the Form I-9 requirement flexibilities to August 31, 2021.

State News:

New California Mask Requirements

On June 17, 2021, new California mask requirements were released to match the federal Center for Disease Control's guidance. Under the California guidance:

- *Vaccinated people do not need to wear masks in most circumstances*
- *Unvaccinated people should wear masks in indoor, public settings*
- *Everyone should wear masks in:*
 - *Public transit*
 - *Hospitals*
 - *Long-term care facilities*
 - *Homeless shelters*
 - *Indoors in K-12 schools, childcare, and other youth settings*

See California Department of Public Health's [Face Coverings Q&A](#) to learn more about where masks are still required or recommended.

Important July Deadlines:

- ***7/31/2021:*** Employers must file quarterly tax returns (Form 941) for the second quarter of 2021. Deposit or pay any undeposited tax under the accuracy of deposit rules. If the tax liability is less than \$2,500, it can be paid in full, with a timely filed return. (Employers that have deposited all of the tax when due have until August 10 to file.)
- ***7/31/2021:*** 5500 is due for retirement plans that run on a calendar year unless an extension is requested.

Happy 4th of July!!

