



KEY CHANNEL PARTNER OF THE MONTH

PAYROLL

May Economic Outlook: The Fed Keeps Its Eye on Interest Rates—so can you.

- Quick Takeaways**
- Hiring in hard-hit sectors is finally picking up, pointing to more positive signs for the economy—if the U.S. can keep a COVID-19 resurgence at bay, it will help the globe, too.
 - The Fed has promised to keep interest rates low which means that Americans who may have withheld big purchases still may be able to access to funds at very low interest rates.
 - Although low interest rates translate into low return on savings, there are steps you may take to make your money work harder and earn more.

Interest Rates: From the Fed to You: Eight times a year, the Board of Governors of the U.S. Federal Reserve (Fed) meets to discuss policies. But the decision that’s anticipated the most is the vote on the federal funds rate.

Think of the federal funds rate as the baseline for much of the economic activity that happens across the country. Right now, it hovers around 0.25% 1—much lower, of course, than even the very low rate you might have on your mortgage. So how does that rate get from the Fed to your 3% (ish) home loan?

In a nutshell, the Fed makes money available to financial institutions at the federal fund rate. Those, in turn, lend money to one another at another rate, before finally lending it to you and millions of others at a consumer rate. Rates increase from the Fed to financial institutions, and from financial institutions to you, to pay for daily business operations and generate profits. Traditional savings rates—also offered by financial institutions—are low because there’s less motivation for them to pay you to hold onto your money.

Interest Rates: For Saving: While the Fed’s approach to interest rates offers borrowing benefits, it’s balanced out by the less-than-stellar impact on savings. That’s because a low Fed rate also translates into a low rate for everything from traditional savings accounts to certificates of deposits.

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Financial pros know this, and that’s why so many advocate an asset allocation approach to retirement accounts—meaning you’re investing money across a mix of asset classes with different levels of risk and reward.

Whether or not you realize it, you’re already practicing asset allocation with non-retirement funds, too. You’ve spread out your debt or risk—a mortgage with one interest rate and due date, a car loan with another, for example. You may have also distributed savings, with a checking account that may earn one rate and a traditional savings account that earns another.

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Unanswered Questions About Paid COVID-19 Leave and Employer Tax Credits

The American Rescue Plan Act (ARPA) offers tax credits for employers that provide emergency paid sick leave, emergency family leave and paid time off to receive COVID-19 vaccinations, but there are some gray areas. Must emergency paid leave, if offered, be provided on an all-or-nothing basis? Does emergency paid family and medical leave time off exhaust an employee's unpaid 12-week Family and Medical Leave Act (FMLA) allotment? Employers' answers to these questions may depend on their willingness to risk liability for not following the law correctly and losing their tax credits.

ARPA Tax Credits

ARPA allowed employers to voluntarily extend emergency paid sick leave (EPSL) and emergency Family and Medical Leave Expansion Act (EFMLEA) provisions of the Families First Coronavirus Response Act (FFCRA) to employees and receive tax credits through Sept. 30.

The FFCRA had two major provisions, the EPSL Act and the EFMLEA. Under the EPSL Act, private employers with fewer than 500 employees and some public employers had to pay sick leave of up to 80 hours, or roughly 10 days, to employees who needed to take leave for certain coronavirus-related reasons.

Under the EFMLEA, employees were eligible for an additional 10 weeks of family leave paid at two-thirds of their regular wages to care for a child whose school or place of care is closed or whose child care provider is unavailable because of COVID-19. The FFCRA does not have requirements for private-sector employers with 500 or more employees, and ARPA did not change that.

Employers that last year said they weren't covered by the FFCRA but that want to claim a tax credit under ARPA should be prepared to explain what in their business changed or else risk liability under the FFCRA and jeopardize their ARPA tax credits, cautioned Stan Hill, an attorney with Seyfarth in Atlanta.

"While ARPA does not mandate that covered employers continue to provide EPSL and EFMLEA to employees as the FFCRA provided in 2020, it does broaden the qualifying reasons for the tax credit and provides a new bank of EPSL," said Donna Glover, an attorney with Baker Donelson in Baltimore.

Employers that choose to voluntarily provide FFCRA benefits under ARPA also must continue to comply with the original FFCRA rules governing benefit payments and tax credits and the new rules under ARPA.



The FFCRA's original six qualifying reasons include:

- The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
- The worker is subject to the advice of a health care provider to self-quarantine related to COVID-19.
- The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.
- The worker is caring for an individual subject to an order described in the first two qualifying reasons listed above.
- The employee is caring for a child whose school or place of care is closed—or child care provider is unavailable—for reasons related to COVID-19.
- The worker is experiencing any other substantially similar condition identified by the secretary of Health and Human Services.

ARPA added additional qualifying reasons as follows:

- The employee is obtaining a COVID-19 vaccination.
- The worker is recovering from an injury, disability, illness or condition related to a vaccination.
- The employee is seeking or awaiting the results of a COVID-19 test or diagnosis because either the employee has been exposed to COVID-19 or the employer requested the test or diagnosis.

Coordinating Paid FMLA with Classic FMLA

"One overarching issue remains—does paid FMLA exhaust an employee's 12-week classic FMLA allotment?" Nowak asked. ARPA "does not address the issue and neither the DOL nor IRS has offered any guidance to employers." An employer must determine its risk tolerance, he said. "If it wants to play it conservatively, the employer should provide paid FMLA on top of any FMLA classic leave. This is a ton of leave, but this approach ensures no liability."

If the employer's risk tolerance is higher, it might consider including paid FMLA as part of the classic FMLA bank and paid FMLA would draw down the employee's FMLA classic leave, Nowak said. "It is incomprehensible that Congress would have intended eligible employees to obtain one bucket of 12 weeks of classic FMLA and a separate bucket of 12 weeks of paid FMLA," he reasoned. EPSL reimburses employers at a higher rate for some employees; the cap is \$511 for some of the reasons for leave under EPSL versus \$200 per day under EFMLEA, she noted.

Providing 10 days of paid sick leave and not an entire bucket of paid FMLA leave "is far more palatable for many employers," said Jeff Nowak, an attorney with Littler in Chicago.

shrm.org

EMPLOYEE BENEFITS

White House Reverses Trump Ban on LGBTQ+ Healthcare Protection



The federal government will begin enforcing protections for LGBTQ Americans in healthcare again, reversing a ban put in place by the Trump administration, the Health and Human Services Department announced.

The decision to do so was made in light of the Supreme Court's finding in *Bostock v. Clayton County*, which held that LGBTQ people are protected from discrimination under Title VII of the Civil Rights Act of 1964.

Section 1557 of the Affordable Care Act prohibits discrimination on the basis of race, color, national origin, sex, age, or disability by entities that primarily provide healthcare and receive federal funding. This notice says that the Biden administration will enforce it as the law was initially intended.

This notice doesn't address all aspects of the Trump-era rule, including which entities are covered under the rule, protections for those with limited English proficiency and others, said Omar Gonzalez-Pagan, an attorney with Lambda Legal, an LGBTQ legal and advocacy organization.

LGBTQ Americans have been "so challenged by the previous interpretation from the previous administration, and this is a breath of fresh air," Levine, the highest ranking openly transgender person in the Biden administration, said.

Employer Insurance Question

About 156 million people get their insurance through their employers. Most employers rely on health insurance companies to process their claims and administer their plans as a

third-party administrator, said Matthew Cortland, a disability rights attorney policy director at the healthcare advocacy organization Be a Hero Fund.

However, the question of how it applies to insurers has been a conflict over the past five years. The Obama administration issued a rule in 2016 that said those protections applied to employer-sponsored plans that relied on insurance companies receiving federal funds as a third-party administrator, Keith said.

The 2016 rule was "clearly intended" to reach the third-party administrators of the employer-sponsored plans, Cortland said. However, the employer-sponsored plan insurance industry made clear it didn't want the nondiscrimination law to apply to third-party administrators and the 2020 Trump-era rule reversed that.

The Trump-era regulation allowed healthcare workers, hospitals and insurance companies that receive federal funding to refuse to provide or cover any care for LGBTQ Americans.

The 2020 rule says health insurers aren't bound by the ACA's nondiscrimination provisions because they don't provide healthcare, Wayne Turner, a senior attorney at the National Health Law Program, said.

The two previous regulations are still tied up in lawsuits and this notice is likely to follow the same fate. Keith said there will likely be more litigation surrounding Section 1557 until the Supreme Court rules definitively on it or Title IX.

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GOLF CORNER



BRETT DREWITT

Key HR's own, Brett Drewitt is currently playing in the Visit Knoxville Open in Knoxville, TN. To keep up to date on his progress, follow us on facebook, twitter, or Instagram! We wish Brett luck at this latest Korn Ferry Golf Tour.

GO BRETT!!

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