**PREMIUM PAY SUMMARY**

**American Rescue Plan Act (“ARPA”) Fiscal Recovery Funds (“FRF”) may be used to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work.**

Premium pay is a way that recipients can offer additional support to those eligible workers who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors. Since the start of the public health emergency, essential workers have put their physical well-being at risk to meet the daily needs of their communities and to provide care for others.

**What is premium pay?**

Premium pay is an amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives. Premium pay can not exceed $25,000 per eligible worker.

Treasury’s Interim Final Rule (31 C.F.R. § 35) emphasizes the need for recipients to prioritize premium pay for lower-income workers. Treasury also encourages recipients to prioritize providing retrospective premium pay where possible because many eligible essential workers have not received additional compensation for essential work conducted since the beginning of the public health emergency.[[1]](#footnote-1) Premium pay that would increase a worker’s total pay above 150% of the greater of the state or county average annual wage requires specific written justification for how it responds to the needs of these workers.

**Who is an eligible employer?**

“Eligible employer” means an employer of an eligible worker who performs essential work. 31 C.F.R. § 35.3.

**Who are eligible workers?**

“Eligible workers” means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or child care; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID–19 mitigation and containment; work in a mortuary; work in critical clinical research, development, and testing necessary for COVID–19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, Territory, or Tribal government, workers in any additional sectors as each Governor of a State or Territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, Territory, or Tribal government. 31 C.F.R. § 35.3.

**What is essential work?**

“Essential work” means work that:

(1) Is not performed while teleworking from a residence; and

(2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work. 31 C.F.R. § 35.3.

**Can the chief executive officer of a city designate additional critical infrastructure sectors?**

Yes, the chief executive officer of a city can designate additional sectors to those listed in the Interim Final Rule provided the additional sectors are considered critical to health and well-being of its residents.31 C.F.R. § 35.3.

**Can an eligible worker receive both retrospective and prospective premium pay?**

Yes, an eligible worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current work, but it is important to keep in mind that there is an aggregate cap of $25,000 per eligible worker.

**Would Federal Insurance Contributions Act (“FICA”) taxes paid by an employer in relation to premium pay be an eligible use of FRF funds?**

If an employee’s wage and salaries are an eligible use of FRF, recipients may treat the employee’s covered benefits as an eligible use of FRF. For purposes of the FRF, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

**Can FRF funds be used to pay covered benefits costs related to premium pay?**

If an employee’s wage and salaries are an eligible use of FRF, recipients may treat the employee’s covered benefits as an eligible use of FRF. For purposes of the FRF, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

**For what period of time may premium pay be provided?**

Premium pay may be provided for work performed at any time since the start of the COVID-19 public health emergency (January 27, 2020).[[2]](#footnote-2) Premium pay may be provided retroactively for eligible workers who have yet to be adequately compensated for previously performed work.

**What type of supporting documentation is required for premium pay?**

If premium pay would increase an eligible “worker’s total pay above 150 percent of their residing state’s average annual wage for all occupations or their residing county’s average annual wage, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, whichever is higher, on an annual basis,” then the local government must provide written justification of how the premium pay or grant is responsive to workers performing essential work. Because Treasury encourages recipients to prioritize compensation for lower income eligible workers that perform essential work, documentation of the method a recipient uses to determine which workers should be paid premium pay would appear to be a best practice. Treasury also encourages recipients to prioritize providing retrospective premium pay where possible. It would also be a best practice to document the method of determining which workers should be paid retrospective premium pay.

**Remember the U.S. Treasury is always a good source of information. You can access Treasury’s Interim Final Rule (31 C.F.R. § 35) at:** [**2021-10283.pdf (govinfo.gov)**](https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf)

**If you have general questions about the Coronavirus State and Local Fiscal Recovery Funds, please email the U.S. Department of Treasury at** **SLFRP@treasury.gov** **or call 844-529-9527.**

1. However, such compensation must be “in addition to” remuneration or wages already received. That is, employers may not reduce such workers’ current pay and use Fiscal Recovery Funds to compensate themselves for premium pay previously provided to the worker. [↑](#footnote-ref-1)
2. Recipients may not use FRF funds for costs of premium pay incurred before March 3, 2021. [↑](#footnote-ref-2)