

Agencies Issue Guidance on Coronavirus Paid Leave Tax Credits

March 25, 2020

On March 20, 2020, the IRS, Treasury and U.S. Department of Labor (DOL) issued [guidance](#) (the “Guidance”) clarifying how employers can take advantage of tax credits that will reimburse them for providing coronavirus-related paid leave under the [Families First Coronavirus Response Act](#) (the “FFCRA”).

What Does the New FFCRA Guidance Say? How Does it Change the Law?

The new Guidance doesn’t change the FFCRA, but rather, clarifies how employers can claim the tax credits to get reimbursed. As background (and as explained in our [prior eAlert on the FFCRA](#)), employers with less than 500 employees (“covered employers”) are allowed to use two new payroll tax credits to get reimbursed for the costs of providing paid coronavirus-related leave to their employees. The new Guidance names the new tax credits: (1) the “paid sick leave credit” and (2) the “paid child care leave credit.”

How do Employers Get Reimbursed for the Cost of Providing Leave?

When employers pay their employees, they are required to withhold from employees’ paychecks federal income taxes and their employees’ share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes,

with the IRS, and file quarterly payroll tax returns (using the [IRS’ Form 941](#)).

Under guidance that will be released next week, covered employers who pay qualifying sick or childcare leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and childcare leave that they paid, rather than deposit them with the IRS.

The payroll taxes that employers can retain include taxes withheld from federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes applicable to all employees.

If there are not sufficient payroll taxes to cover the cost of qualified sick and childcare leave paid, employers will be able to file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. The details of this new, expedited procedure will be announced next week.

What is an Example of How this Works?

If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under

SYNOPSIS

New guidance clarifies how employers can take advantage of refundable tax credits that will reimburse them for providing coronavirus-related paid leave under the Families First Coronavirus Response Act.

This alert includes:

- examples of applicable paid leave
- which employers are exempt
- how the new tax credits work, and more

the FFCRA to deposit the remaining \$3,000 on its next regular deposit date.

How Much Money Can Employers Expect to Receive from these Tax Credits?

Paid Sick Leave Credit:

Covered employers may receive a refundable sick leave credit at the employee's regular rate of pay, up to \$511 per day and \$5,110 in the aggregate, for a total of 10 days for the following reasons:

- Employee is unable to work because of coronavirus quarantine or self-quarantine; or
- Employee has coronavirus symptoms and is seeking a medical diagnosis.

Covered employers may claim a credit for two-thirds (2/3) of the employee's regular rate of pay, up to \$200 per day and \$2,000 in the aggregate, for up to 10 days for the following reasons:

- Employee is caring for someone with coronavirus; or
- Employee is caring for a child because the child's school or childcare facility is closed, or the childcare provider is unavailable due to the coronavirus.

Additionally, covered employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the covered employee during the leave period.

Child Care Leave Credit:

In addition to the sick leave credit explained above, covered employers may receive a refundable child care leave credit. This credit is equal to two-thirds (2/3) of the employee's regular pay, capped at \$200 per day or \$10,000 in the aggregate. Up to 10 weeks of qualifying leave can be counted toward the child care leave credit. Additionally, covered employers are entitled to an

additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

DOL Non-enforcement Period:

The Guidance also clarifies that the DOL will soon issue a temporary non-enforcement policy that provides a 30-day period of time for employers to come into compliance with the FFCRA, where enforcement actions will not be sought so long as the employer has acted reasonably and in good faith to comply. The DOL will instead focus on compliance assistance during this period.

If Our Company Announces a Furlough or Layoff due to the Coronavirus, Will All of Our Employees Involved be required to Take Paid Leave?

No. The FFCRA and this Guidance do not require that employers give every employee a paid leave while in a furlough or layoff. Paid leave can only be taken when an employee needs to take it for his/her own coronavirus-related health needs, or to care for a family member during this health emergency.

What Should Employers Do Next?

Employers that will need to provide paid leave to affected employees should consult with their payroll vendors and leave administrators to ensure that the proper systems have been established to account for these new tax credits in order to ensure adequate reimbursement from the IRS.

In addition to this Guidance, new DOL regulations are expected to be issued by April 2, 2020 that will likely further clarify the rules about paid coronavirus leave under the FFCRA. We will continue to provide you with updates and explanations about how these new rules apply to your benefits and insurance programs.

If you have questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.

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