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Families First Coronavirus Response Act

Summary

For certain circumstances related to COVID-19, employees will be eligible for:

- Up to two weeks of sick leave (full pay for self, 2/3 pay for family care) for illness, quarantine, or school closures
- Up to 12 weeks of Family and Medical Leave Act (FMLA) leave for school closures (10 days unpaid and then up to 10 weeks at 2/3 pay)

Effective Date of Law

- The FMLA and Paid Sick Leave sections discussed below will go into effect on April 2, 2020 and expire December 31, 2020.
- It appears there is no retroactive application.

Key Elements for Employers

- FMLA expansion
- Paid sick leave
- Payroll tax credit
- Group health plan benefit mandate

Emergency FMLA Expansion

Covered Employers: Employers with fewer than 500 employees are covered.

Covered Employees: Any employee who has been employed for at least 30 calendar days, though employers may be able to exclude employees who are health care providers or emergency responders.

Covered Leave Purpose: To care for a child under 18 of an employee if the child's school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency, defined as an emergency with respect to the coronavirus declared by a federal, state, or local authority.

Duration:

- Up to 12 weeks of job-protected leave

Compensation:

- No pay for first 10 days of leave (other paid time off, and emergency sick leave under the FFCRA, may be applied)
- After 10 days, employers must pay two thirds of the employee's regular rate of pay for the number of hours they would normally be scheduled to work, capped at \$200/day and \$10,000 total.

Reinstatement to Position after Leave:

The same reinstatement provisions apply as under traditional FMLA. However, restoration to position does not apply to employers with fewer than 25 employees if certain conditions are met:

- The job no longer exists because of changes affecting employment caused by an economic downturn or other operating conditions that affect employment caused by a public health emergency;
- The employer makes reasonable efforts to return the employee to an equivalent position; and
- The employer makes efforts to contact a displaced employee if anything comes up within a year of when they would have returned to work.

Note: The act reserves the right for the Secretary to exclude certain care providers and first responders from the list of eligible employees and to exempt small businesses with fewer than 50 employees if business viability is jeopardized.

Emergency Paid Sick Leave

Covered Employers: Employers with fewer than 500 employees.

Covered Employees: All employees (no matter how long they have been employed), though employers may be able to exclude employees who are health care providers or emergency responders.

Covered Leave Purposes:

1. When quarantined or isolated subject to federal, state, or local quarantine/isolation order;
2. When advised by a health care provider to self-quarantine (due to concerns related to COVID-19);
3. When experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. When caring for an individual doing #1 or #2 (2/3 pay);
5. When caring for a child whose school or place of care is closed due to COVID-19 (2/3 pay); or
6. When the employee is experiencing any other substantially similar condition (2/3 pay).

Duration of Leave:

- Full time employees are entitled to 80 hours of paid sick leave.
- Part time employees are entitled to sick leave equal to the number of hours worked on average over a typical two-week period.

Rate of Pay:

- Sick leave must be paid at the employee's regular rate of pay for leave used for the employee's own illness, quarantine, or care.
- Sick leave must be paid at two-thirds of the employee's regular rate if taken to care for a family member or to care for a child whose school has closed, or if the employee's childcare provider is unavailable due to the coronavirus.
- Pay is capped at \$511/day and \$5,110 total for reasons 1, 2, and 3 described above.
- Pay is capped at \$200/day and \$2,000 total for reasons 4, 5, and 6 described above.

Interaction with Other Employer-Provided Paid Sick Leave and other Paid Leave:

- This act does not preempt existing state and local paid sick leave requirements.
- Employers cannot require employees to use other leave first.
- Sick leave provided for under the act does not carry over from year to year, and the requirements expire December 31, 2020.

Notice Requirements:

- Employers must post a model notice, which will be provided by the federal government.

Note: The act reserves the right for the secretary to exclude certain care providers and first responders from the list of eligible employees and to exempt small businesses with fewer than 50 employees from providing paid leave for childcare if business viability is jeopardized.

Payroll Tax Credit

- Applies to both the emergency FMLA expansion and the emergency sick leave.
- Dollar for dollar credit for sick leave and paid FMLA wages against the employer portion of Social Security taxes.
- Refund is possible for amounts that exceed what is available as a credit.
- Limits on what can be claimed mirror the caps for what must be paid.

Health Plan Benefit Mandate

- The act requires all insured and self-funded medical plans, including grandfathered plans, to cover diagnostic testing-related services for COVID-19 at 100 percent without any deductibles or co-pays.
- Examples include services provided by doctors, emergency rooms, and urgent care centers leading up to the decision that testing is needed, along with the actual lab-based testing.
- The mandate does not apply to treatment.

How to Pay for Leave Required by Families First Coronavirus Response Act

Including the information in the link below, this is all we currently know about the payroll tax credit under the FFCRA and how to access or administer it. We will update the HR Support Center as soon as new information or guidance is available.

On Friday, March 20, the U.S. Treasury, IRS, and U.S. Department of Labor announced their plans for making the paid leave provisions in the Families First Coronavirus Response Act (FFCRA) less burdensome for small businesses. Key points include:

- To take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form that will be released next week.
- The Department of Labor will release “simple and clear” criteria for businesses with fewer than 50 employees to apply for exemptions from the leave provisions related to school and childcare closures; and
- There will be a 30-day non-enforcement period for businesses making a reasonable effort.

We know that for many of our clients, business slowdowns related to the spread of COVID-19 have made it hard to imagine how they could bear any additional expenses. We encourage anyone with these concerns to read the linked announcement carefully.

The full announcement can be found [here](#) and below.

Today (March 20) the U.S. Treasury Department, Internal Revenue Service (IRS), and the U.S. Department of Labor (Labor) announced that small and midsize employers can begin taking advantage of two new refundable payroll tax credits, designed to immediately and fully reimburse them, dollar-for-dollar, for the cost of providing Coronavirus-related leave to their employees. The legislation will enable employers to keep their workers on their payrolls, while at the same time ensuring that workers are not forced to choose between their paychecks and the public health measures needed to combat the virus.

Key Takeaways

To take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form that will be released next week.

- **Paid Sick Leave for Workers**
For COVID-19 related reasons, employees receive up to 80 hours of paid sick leave and expanded paid childcare leave when employees' children's schools are closed, or childcare providers are unavailable.
- **Complete Coverage**
Employers receive 100% reimbursement for paid leave pursuant to the Act.
 - Health insurance costs are also included in the credit.
 - Employers face no payroll tax liability.
 - Self-employed individuals receive an equivalent credit.

- **Fast Funds**
Reimbursement will be quick and easy to obtain.
 - An immediate dollar-for-dollar tax offset against payroll taxes will be provided
 - Where a refund is owed, the IRS will send the refund as quickly as possible.
- **Small Business Protection**
Employers with fewer than 50 employees are eligible for an exemption from the requirements to provide leave to care for a child whose school is closed, or childcare is unavailable in cases where the viability of the business is threatened.
- **Easing Compliance**
Requirements are subject to 30-day non-enforcement period for good faith compliance efforts.

Prompt Payment for the Cost of Providing Leave

When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the 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 ([Form 941](#) series) with the IRS.

Under guidance that will be released next week, eligible 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 are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect 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 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.

Examples:

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

If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.

Equivalent childcare leave and sick leave credit amounts are available to self-employed individuals under similar circumstances. These credits will be claimed on their income tax return and will reduce estimated tax payments.

Small Business Exemption:

Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or childcare unavailability where the requirements would jeopardize the ability of the business to continue. The exemption will be available on the basis of simple

and clear criteria that make it available in circumstances involving jeopardy to the viability of an employer's business as a going concern. Labor will provide emergency guidance and rulemaking to clearly articulate this standard.

Non-Enforcement Period:

Labor will be issuing a temporary non-enforcement policy that provides a period of time for employers to come into compliance with the Act. Under this policy, Labor will not bring an enforcement action against any employer for violations of the Act so long as the employer has acted reasonably and in good faith to comply with the Act. Labor will instead focus on compliance assistance during the 30-day period.

For More Information:

For more information about these credits and other relief, visit [Coronavirus Tax Relief](#) on IRS.gov. Information regarding the process to receive an advance payment of the credit will be posted next week.

Background on the Leaves and Pay That Must be Provided:

The Act provided paid sick leave and expanded family and medical leave for COVID-19 related reasons and created the refundable paid sick leave credit and the paid childcare leave credit for eligible employers. Eligible employers are businesses and tax-exempt organizations with fewer than 500 employees that are required to provide emergency paid sick leave and emergency paid family and medical leave under the Act. Eligible employers will be able to claim these credits based on qualifying leave they provide between the effective date and December 31, 2020. Equivalent credits are available to self-employed individuals based on similar circumstances.

Paid Leave:

The Act provides that employees of eligible employers can receive two weeks (up to 80 hours) of paid sick leave at 100% of the employee's pay where the employee is unable to work because the employee is quarantined, and/or experiencing COVID-19 symptoms, and seeking a medical diagnosis. An employee who is unable to work because of a need to care for an individual subject to quarantine, to care for a child whose school is closed or child care provider is unavailable for reasons related to COVID-19, and/or the employee is experiencing substantially similar conditions as specified by the U.S. Department of Health and Human Services can receive two weeks (up to 80 hours) of paid sick leave at 2/3 the employee's pay. An employee who is unable to work due to a need to care for a child whose school is closed, or child care provider is unavailable for reasons related to COVID-19, may in some instances receive up to an additional ten weeks of expanded paid family and medical leave at 2/3 the employee's pay.

Paid Sick Leave Credit:

For an employee who is unable to work because of Coronavirus quarantine or self-quarantine or has Coronavirus symptoms and is seeking a medical diagnosis, eligible employers may receive a refundable sick leave credit for sick leave 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 an employee who is caring for someone with Coronavirus, or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to the Coronavirus, eligible employers may claim a credit for two-thirds of the employee's regular rate of pay, up to \$200 per day and \$2,000 in the aggregate, for up to 10 days. Eligible 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.

Child Care Leave Credit:

In addition to the sick leave credit, for an employee who is unable to work because of a need to care for a child whose school or child care facility is closed or whose child care provider is unavailable due to the Coronavirus, eligible employers may receive a refundable child care leave credit. This credit is equal to two-thirds 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 towards the childcare leave credit. Eligible 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.

This information has been provided by the Bene-Care HR Support Center and is considered accurate as of 3/23/2020. Additional information will be released as it becomes available from the federal government.

**For the most up to date COVID-19 regulations effecting employers,
please visit our dedicated webpage.**

