

Small And Mid-Size Businesses Should be Able to Swiftly Recover the Cost of Providing Coronavirus Related Paid Leave Under the Families First Coronavirus Response Act

Working Together

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Employers with fewer than 500 employees (“Eligible Employers”) are required to provide paid leave for employees on leave due to (1) their own COVID-19 related health needs; or (2) caring for family members under certain circumstances related to COVID-19 under the Families First Coronavirus Response Act (“FFCRA”). (See P&C article re: FFCRA for more information on who is an Eligible Employer). Eligible Employers have two ways in which the cost of this paid leave may be recouped. The IRS explained in an announcement that small and mid-sized employers will be able to immediately take advantage of two new refundable payroll

tax credits that are designed to immediately and fully reimburse them dollar-for-dollar for the cost of providing Coronavirus-related leave to their employees. (See IRS DOL Tax Credit Press Release). While the IRS indicated that it would be issuing official guidance sometime this week, it has previewed what the tax credits will look like.

Paid Sick Leave Credit

For an employee who is unable to work because of Coronavirus quarantine, self-quarantine, or who has Coronavirus symptoms and is seeking a medical diagnosis, an Eligible Employer may receive a refundable sick leave credit for sick leave at the employee’s regular rate of pay up to \$511 per day for a total of ten (10) days.

For an employee who is caring for someone with Coronavirus, is caring for a child because the child’s school or day care facility is closed or the child’s day care provider is unavailable due to Coronavirus, Eligible Employers may claim a credit for two-thirds of the employee’s regular rate of pay, up to \$200 per day for up to ten (10) days.

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Child Care Leave Credit

In addition to the paid sick leave credit, for an employee who is unable to work because of the need to care for a child whose school or day care is closed or whose child care provider is unavailable due to Coronavirus, Eligible Employers may receive a refundable child care credit leave. This credit is equal to two-thirds of the employee's regular pay, up to \$200 per day or \$10,000 in the aggregate, for up to ten (10) weeks of qualifying leave.

Credit For The Cost Of Health Insurance

In both types of leave, an Eligible Employer will be able to take an additional tax credit determined on the basis of the costs to maintain health insurance coverage for the eligible employee during the leave.

Process For Receiving The Tax Credits

Normally, when employers pay their employees, they are required to withhold from the employees' paychecks federal income tax and the employees' share of Social Security and Medicare taxes ("Employee Payroll Taxes"). Employers deposit the Employee Payroll Taxes and the employers' share of Social Security and Medicare taxes with the IRS (the "Combined Quarterly Payroll Taxes"). The IRS has indicated that under the guidance that will be forthcoming, Eligible Employers will be able to retain an amount of the Combined Quarterly Payroll Taxes equal to the amount of qualifying sick and child care leave that was paid. If there are insufficient Combined Quarterly Payroll Taxes to cover the cost of the qualified sick and child care leave, Eligible Employers will be able to request an accelerated payment from the IRS for the excess costs. The IRS signaled that it expects to process these requests in two weeks or less. These credits are only available between the effective date of FFCRA (April 2, 2020) and December 31, 2020.

Self Employed Individuals

The IRS also signaled that self-employed individuals can take equivalent child care leave and sick leave credits. These credits will be claimed on the individual's income tax return and will reduce the estimated tax payments. More information will be forthcoming once the IRS publishes its official guidance on this matter.

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