

Families First Coronavirus Response Act

As you are probably aware the federal government has taken swift measures to provide paid leave for employees who must miss work because of the impact of COVID-19 under the Families First Coronavirus Response Act. The act requires certain employers to provide paid sick leave but also provides for employment tax credits to offset the costs.

We hope to clarify the legislation and information as it becomes available so you can plan during the uncertainty of these economic times. The Act is still being interpreted and we are waiting on more guidance, but here is what we know now:

- What employers are covered? Employers who employ less than 500 employees are required to provide paid sick leave to their employees. The Act exempts employers with less than 50 employees from paying the mandated sick time for employees who are caring for child whose school or other care is closed if the requirements would “jeopardize the viability of the business as a going concern”.
- What employees are covered? Full and part time employees are covered if they fall under the following categories:
 1. Subject to a Federal, State or local quarantine or isolation order related to COVID-19
 2. Advised by a healthcare provider to self-quarantine due to concerns related to COVID-19
 3. Experiencing symptoms of COVID-19 and seeking a medical diagnosis
 4. Caring for an individual who is quarantined
 5. Caring for a son or daughter if the school or other child care provider is closed due to COVID-19 precautions
 6. Experiencing other similar conditions specified by governmental entities
- What amount should be paid? For full time workers, up to 80 hours of paid sick time is mandated. Part time workers are paid based on the average number of hours over a two-week period. The amount to be paid depends on the category (listed above):
 1. 100% of the employee's regular rate of pay for categories 1-3 (listed above) with a maximum amount of \$511 per day/\$5,110 total
 2. Two-thirds of the employee's regular rate of pay for categories 4-6 (listed above) with a maximum amount of \$200 per day/\$2,000 total
- What if the employer already has other paid leave? The employer cannot require that the employee use other paid leave before the emergency leave provided by the law.
- How does the credit work? The employer receives a credit for the amount paid against the employer portion of Social Security taxes on wages paid for that quarter. Excess sick paid time over the Social Security taxes is a refundable overpayment. The amount of the credit also covers any health plan expenses allocated to the sick leave period such as the cost of the group health plan. The credit is also increased by the employer's share of Medicare taxes on the mandated sick pay. The limits on the credit mirror the limits on the amount required to be paid (see above). The employer will claim the credit on the Form 941 for the quarter. If a refund is due, the IRS will provide for an accelerated payment. The expedited procedure for any refund due has not been announced yet.

- How will the paid sick leave and corresponding credits impact payroll tax and income tax for the employer? The sick leave will not be subject to the employer portion of Social Security taxes. The credit will be considered income to the employer which offsets the cost of the paid sick leave for the net zero effect.
- How will the paid sick leave and corresponding credits impact the income tax for the employee? The paid sick time will be includible in the employee's income as wages.
- What about the expansion of Emergency Family and Medical Leave? The new law also expanded the FMLA to apply to the employers covered under the Emergency Paid Leave. Employers are required to provide paid leave for employees who have been employed for at least 30 calendar days and are unable to work due to a need to care for a son or daughter under age 18 if the school or child care provider has closed. The amount paid under this Emergency Family and Medical Leave is limited to \$200 per day/\$10,000 in total. The first 10 days of leave may be unpaid under this section, and the employee can choose to use any accrued paid time off such as vacation or sick time during the first 10 days of this unpaid leave.
- When does this apply? According to the Department of Labor, the law applies from April 1, 2020 through December 31, 2020. However, the first 30 days are going to be considered a "non-enforcement period" as long as the employer is acting reasonably and in good faith to comply.
- What about self-employed individual? Self-employed individuals can also receive a credit against SECA taxes on their individual income tax returns for an equivalent amount.
- What else should I know? There are provisions that prevent any doubling of credits under either the Emergency Paid Sick Time or the Emergency Family and Medical Leave. The Department of Labor will be providing a model notice for employers.

Please note that as this is brand new legislation, we are doing our best to interpret and explain it. However, details may change with additional information. More guidance should be coming on this law that will hopefully give more clarity.