

IRS sets out how employers can get coronavirus-related credits

IR 2020-57, 3/20/2020

In an Information Release, the IRS has announced that employers can begin taking advantage of two new refundable payroll tax credits created by the Families First Coronavirus Response Act (the Act, PL 116-127, 3/18/2020). The IRS also announced that it will release guidance on how eligible employers who pay qualifying sick or child care leave under the Act will be able to file a request for an accelerated payment from the IRS.

Background-Act summary. The Information Release summarizes the Act as follows:

The Act provides 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 child care 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 can 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 in 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 10 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 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. 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 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 towards the child care 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.

Prompt payment for the cost of providing leave. In general, 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. ([Code Sec. 3402](#) , [Code Sec. 3101\(a\)](#) , [Code Sec. 3101\(b\)](#)) 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. (Instructions for Form 941)

The Information Release says that, under guidance that will be released next week, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.

The Information Release says that 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 child care 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 child care 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. The Information Release says that small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or child care 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. The Department of Labor (Labor) will provide emergency guidance and rulemaking to clearly articulate this standard.

Non-enforcement period. The Information Release says that 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.