

IRS Provides New Guidance Regarding Tax Credits under the Families First Coronavirus Response Act

On March 31, 2020, the IRS published new guidance regarding the Families First Coronavirus Response Act (FFCRA) and unveiled updated information regarding eligible employers' obligations under the Act. Specifically, the IRS addressed what employers need to do to obtain tax credits under the Act and provided additional information regarding the documentation needed to support a qualifying leave request. Notably, the IRS guidance now requires employees taking leave to care for a child **older than 14** to demonstrate a "special circumstance" exists requiring the employee to provide care. Given the ever-evolving federal guidance regarding the FFCRA, this practical summary is intended to help employers understand the obligations and benefits required under the Act.

When and how can employers start claiming tax credits under the FFCRA?

Employers can immediately be reimbursed for wages paid for qualifying leave under the Act between April 1, 2020, and ending on December 31, 2020.

To obtain the tax credit, employers can claim the credits on their federal employment tax returns (e.g., Form 941, Employer's Quarterly Federal Tax Return), but can benefit more quickly from the credits by reducing their required deposits of payroll taxes that have been withheld from employees' wages by the amount of the credit. If there are insufficient federal employment taxes to cover the amount of the credits, an employer may request an advance payment of the credits from the IRS by submitting a Form 7200, Advance Payment of Employer Credits Due to COVID-19.

What is the amount of tax credit available to employers under the FFCRA?

The tax credit covers 100 percent of the paid sick leave and expanded family and medical leave wages that an employer pays to an eligible employee, plus the employer's share of Medicare taxes on those wages.

What documentation does an employer need to maintain to claim the tax credit?

Employers claiming tax credits must retain records and documentation supporting each employee's leave to substantiate the claim for the credits.

To substantiate the claim, an employer must obtain the following documentation:

- The employee's name;
- The date(s) for which leave is requested;
- A statement of the COVID-19 related reason the employee is requesting leave; and,
- A statement that the employee is unable to work or telework during the leave period.

If the employee is taking leave pursuant to a quarantine order, the employee should include the name of the government entity or health care professional that is ordering or recommending the quarantine.

Additionally, for leave taken to care for a child, the employee must provide:

- The name and age of the child or children needing care;
- The name of the school or place of care;
- A representation that no other person will be caring for the child; and,
- If the child is older than 14, a statement describing "special circumstances" making it necessary for the employee to be absent to care for the child.



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Further, employers must keep documentation to show how the employer determined the amount of qualified sick and family and medical leave wages paid to employees, including “records of work, telework, and qualified sick leave and qualified family leave.”

How long should an employer maintain records to substantiate eligibility for the sick leave or family leave credit?

Employers seeking tax credits under the FFCRA should keep all records of employment taxes for at least four years after the date the tax becomes due or is paid, whichever comes later. These should be available for IRS review.

May an employer receive both tax credits for qualified leave wages under the FFCRA and under the CARES Act?

While employers may claim a credit for both FFCRA leave and CARES Act wages, they may not claim both credits for the same wage payments. Accordingly, employers cannot double-dip to cover the same wage payments.
