
What Employers Need to Know: Families First Coronavirus Response Act

March 27, 2020

Employer Tax Credits Under the Families First Coronavirus Response Act

On Friday, March 20, 2020, the Internal Revenue Service (IRS), U.S. Treasury Department, and U.S. Department of Labor (DOL) released a joint notice (I.R. 2020-57, March 20, 2020) providing preliminary guidance for employers impacted by COVID-19 under the Families First Coronavirus Response Act (the Act).

- **What tax credits are available to covered employers?** The Act authorizes refundable tax credits for covered employers that provide paid sick leave under the Emergency Paid Sick Leave provisions and paid childcare leave under the Emergency FMLA Amendment.
- **How do eligible employers claim the new tax credits?** Covered employers can claim two (2) new tax credits and get “*fast funds*” based on qualifying paid leave provided to employees between the Act’s effective date of April 1, 2020, and December 31, 2020. Employers can retain an amount of payroll taxes equal to the amount of qualifying sick and childcare leave paid to employees. This is a dollar-for-dollar tax deposit offset. (Additional guidance on the reporting mechanics is expected to be released prior to April 1, 2020.)
- **Which “payroll taxes” do not need to be deposited?** Covered employers may keep (instead of depositing) payroll taxes, including federal income taxes withheld from any or all employees, as well as both the employer and employees’ share of Social Security and Medicare taxes.
- **What if an employer’s payroll tax deposits are less than the amount of qualifying paid leave provided?** If a qualifying employer’s payroll tax deposit are less than the cost of the qualified leave paid to employees, the employer can file a request for an accelerated payment from the IRS. The IRS expects to process these payment requests in two (2) weeks or less. (The details of this new, expedited procedure are expected to be released prior to April 1, 2020.)
- **Is there an exemption for small businesses?** Small businesses (fewer than 50 employees) will be eligible for an exemption from both the E-FMLA Amendment and Emergency Paid Sick Leave provisions *if compliance with the requirements would “jeopardize the ability of the business to continue” as a going concern.* (Additional guidance on how an impacted small business can claim the exemption is expected to be released prior to April 1, 2020.)

- **What if eligible employers fail to comply with the Act's requirements?** Covered employers are required to comply with the Act as quickly as possible, beginning April 1, 2020. The DOL will provide a temporary "period of non-enforcement" through April 17, 2020, as long as the employer has acted reasonably and in good faith to comply with the Act. For purposes of this non-enforcement position, "good faith" exists when violations are remedied and the employee is made whole by the employer as soon as practicable, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.

Information related to the *Emergency Paid Sick Leave Act* and the *Emergency Family and Medical Leave Act*, both included under the *Families First Coronavirus Response Act*, is available on the HR Compliance Experts' **Coronavirus Resources** webpage at: <https://hrceexperts.com/coronavirus-covid-19-resources/>

If you have any questions, or require further information regarding these or other related issues, please contact Frank Cania at frank@hrceexperts.com, or 585-416-0751.

Check for additional updates on the HR Compliance Experts' **Coronavirus Resources webpage at <https://hrceexperts.com/coronavirus-covid-19-resources/>**

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