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The Internal Revenue Service (“IRS”) issued guidance on the tax credits under the Families First Coronavirus Response Act (“FFCRA”). This guidance covers a variety of topics including how to calculate and claim the tax credit, how to determine the amount of the tax credit and documentation requirements to verify eligibility for the tax credits.

The FFCRA requires most private sector employers with less than 500 employees to provide paid sick leave and paid family leave to employees who are unable to work or telework due to COVID-19 specific reasons. Under the FFCRA, these small and midsize employers are eligible for refundable tax credits that reimburse them, dollar for dollar (up to a prescribed limit), for the cost of providing such leave, including the employer’s cost of providing qualified health plan expenses to affected employees during the period beginning on April 1, 2020 through December 31, 2020. Although the FFCRA requires most government employers to provide paid leave, it does not entitle those governmental employers to tax credits for this leave. The following FAQs provide additional information.

## How Does an Employer Claim the Tax Credit?

An eligible employer may claim tax credits for qualified leave wages. These credits are available for leave beginning on April 1 and ending on December 31. The employer will also be eligible to claim a tax credit for the cost of qualified health plan expenses provided to the employee through the same period. Employers will claim their credits on federal employment tax Form 941, Employer’s Quarterly Federal Tax Return. Employers can use the tax credits they are earning by reducing their federal employment tax deposits.

If there are insufficient federal employment taxes to cover the amount of the tax credit, an employer may request advance payment of the tax credit by submitting an IRS Form 7200, Advance Payment of Employer Credits Due to COVID-19. The IRS expects to begin processing those requests during April 2020.

## What is the Amount of the Tax Credit Available to Eligible Employers?

The credit covers 100% of the amount of FFCRA's Paid Sick Leave and Expanded Family and Medical Leave wages that have been paid to an employer's employees beginning on April 1. It also includes the amount of any qualified health plan expenses allocable to those wages. The FFCRA adds to the tax credits the amount of the Hospital Insurance tax, also known as Medicare tax, that the employer is required to pay on qualified leave wages. The rate for this tax is 1.45 percent of wages.

## Must Employers Withhold Taxes from the FFCRA Wages Paid to Employees?

Yes. Qualified leave wages are wages subject to withholding of federal income tax and the employee's share of Social Security and Medicare taxes. Qualified leave wages are also considered wages for purposes of other benefits that the employer may provide, such as contributions to 401(k) plans.

## Are FFCRA Wages Taxable to Employees?

Yes. The FFCRA did not include an exception for qualified leave wages from income.

## Can Employers Make Salary Reduction Contributions from Qualified FFCRA Wages for Health Plan, 401(k) or Other Benefit Purposes?

Yes. Because the FFCRA does not distinguish qualified leave wages from other wages, the same rules apply. Therefore, to the extent that an employee has a salary reduction agreement in place, the FFCRA does not prohibit taking salary reduction contributions for any plan from qualified sick leave wages or qualified family leave wages.

## Which Qualified Health Plan Expenses are Eligible?

Qualified health plan expenses for this purpose include fully insured and self-funded medical plans, HRAs, dental plan, vision plans, prescription drug plans and health FSAs. It does not include HSAs.

## What can be Included when Calculating the Amount of Qualified Health Plan Expenses?

The amount of qualified health plan expenses generally includes both the portion of the cost paid by the employer plus the cost paid by the employee with pre-tax salary reduction contributions. The qualified expenses of each plan are aggregated for each eligible employee.

## What is the Amount of Qualified Health Plan Expenses that an Employer who Sponsors a Fully Insured Health Plan Can Use Towards the Tax Credit?

An employer who is fully-insured may use any reasonable method to determine and allocate the plan expenses, including:

- the COBRA applicable premium (without the 2%);
- one average premium rate for all employees; or
- a substantially similar method that takes into account the average premium rate determined separately for employees with self-only and other than self-only coverage.

The IRS has provided that if an employer was to use the average premium rate for all employees (regardless of which tier the employee was covered under: i.e. single, family, employee and spouse), the employer's overall annual premium for the employees would be divided by the number of employees covered by the policy. This would then be divided by the average number of workdays during the year to determine the average daily premium per employee. A typical full-time employee would be treated as working 52 weeks x 5 days or 260 days. A part-time or seasonal employee would be adjusted as appropriate.

## What is the Amount of Qualified Health Plan Expenses that an Employer who Sponsors a Self-Insured Health Plan Can Use Towards the Tax Credit?

An employer who sponsors a self-insured group health plan may use any reasonable method to determine and allocate the plan expenses, including

- the COBRA applicable premium for the employee (without the 2%), typically available from the administrator; or
- any reasonable actuarial method to determine the estimated annual expenses of the plan.

If the employer uses a reasonable actuarial method to determine the estimated annual expenses of the plan, then rules similar to the rules for insured plans are used to determine the amount of expenses allocated to an employee.

## What Information is Required from Employees to Substantiate the Employer's Eligibility for Tax Credits?

An employer must receive a written request for such leave from the employee in which the employee provides:

- the employee's name;
- the date(s) the employee is requesting leave;
- the COVID-19 qualifying reason for leave; and
- a statement that the employee is unable to work/telework due to COVID-19 reasons

Depending upon the reason for the FFCRA leave request, additional documentation may be required if leave is requested:

- due to federal/state/local quarantine, employee must provide name of government entity that issued the quarantine governing that employee;
- due to health provider advising self-quarantine, employee must provide name of the healthcare provider.

- to take care of an individual subject to quarantine, employee must either provide the name of the government entity or the health care provider who advised the quarantine of the individual.
- to care for son or daughter out of school/daycare, employee must provide the name of the child, the name of the school/place of care/child care provider, and a statement that no other suitable person is available to care for the child. Furthermore, if the child is over the age of fourteen, an additional statement must be provided explaining what special circumstances exist to request the leave.

Finally, employers also need to create and maintain records that include the following information:

- how the employer determined the amount of FFCRA wages paid to employee eligible for the credit, including records of work, telework and FFCRA leave;
- how the employer determined the amount of qualified health plan expenses that the employer allocated to the wages paid;
- copies of any completed IRS Form 7200s that the employer submitted for an advance of employer credits due to COVID-19; and
- copies of all completed IRS Forms 941 that the employer submitted to the IRS.

An employer should keep all records of employment taxes for at least 4 years after the date the tax becomes due or paid, whichever is later.

## Employer Action

Employers should coordinate with their finance departments and tax advisors to fully understand available tax credits and the process for obtaining relief.

For the FAQ (which is regularly updated by the IRS), visit <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>.