

3/31/2020

Families First Coronavirus Response Act

This new law was recently passed by congress. There are two sections under this new Act that require employer benefit payments to employees, the Emergency Paid Sick Leave Act and the Emergency Family Medical Leave Act.

- ***The Department of Labor announced that the paid leave provisions are effective on 4/1/2020 and apply to leave taken between 4/1/2020 and 12/31/2020.*** It applies to employers with **less than 500** employees.
- It appears to us that the employee will be subject to all normal taxes on the qualified payments he receives. The employer, it seems, will be subject to the 1.45% Medicare tax but not the 6.2% Social Security tax on the qualified Leave payments. However, there are some differences of opinion on the taxability as these payments seem to be characterized as “compensation” which might make them subject to all normal payroll taxes. Due to these conflicting opinions on what payroll taxes will apply to these payments, we are waiting for further guidance from the IRS.
- The employer receives a tax credit for 100% of the qualified benefits paid (Leave payments plus the 1.45% Medicare tax) under the act. The credit is taken against the employer’s total payroll tax liability including taxes withheld from all its employees. Also, employers can apply for a refund and be reimbursed if their costs for paid qualified leave exceed the payroll taxes they would owe.
- 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.
- There is an exemption from these required payments for employers with fewer than 50 employees “where the requirements would jeopardize the ability of the business to continue”. However, further clarification is needed on how to qualify for this exemption.

Emergency Paid Sick Leave Act (Applicable to private companies)

1. An employer shall provide an employee with paid sick time for any of the following uses:
 - i. Employee is subject to a self-isolation or quarantine order from a government.
 - ii. Employee has been advised by a health care provider to self-quarantine.
 - iii. Employee has COVID-19 symptoms and is seeking a medical diagnosis.
 - iv. Employee is caring for someone in 1 or 2 above.
 - v. Employee is caring for a child whose school is closed and childcare provider is not available due to COVID-19 precautions.
 - vi. Employee is experiencing similar conditions and as specified by Secretary of Health and Human Services.

2. Paid sick leave available to employees shall be limited to \$511/day or \$5110 in the aggregate if the employee is home due to his/her own isolation/quarantine (uses i, ii and iii above), and

limited to 2/3 of their regular pay up to \$200/day or \$2000 in the aggregate if the employee is home caring for a family member with the virus or due to a child's school closure (uses iv, v and vi above).

3. Full-time employees are entitled to 80 hours of paid sick time.
4. Part-time employees are entitled to the number of hours that such employee works on average over a 2-week period.
5. There is no carryover of this sick time from 1 year to the next.
6. This paid sick leave is in addition to any paid sick leave already offered by an employer.
7. An employer may not require that the employee search for or find a replacement employee to cover the hours in which the employee is using paid sick time.
8. Paid sick time is available regardless of how long the employee has been employed by an employer.
9. An employer may not require an employee to use other paid leave before using the paid sick time.
10. Each employer is required to post a notice, to be provided by the Secretary of Labor.
11. Employers are prohibited from discharging or disciplining an employee who takes a leave in accordance with the Act.
12. **An "Employer" under this provision is**
 - i. in the case of a private entity or individual, one that employs fewer than 500 employees**
 - ii. in the case of a public agency or other entity not private, employs 1 or more employees**

Emergency Family and Medical Leave Expansion Act (Applicable to private companies)

1. Expands the coverage of the Family and Medical Leave Act ("FMLA") in its various definitions
2. An "eligible employee" means an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested

3. The “employer threshold” includes those employers with “fewer than 500 employees”
4. A “qualifying need related to a public health emergency” means that an employee has need for leave for the following reason:
 - i. The employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed or childcare is unavailable
5. The first 10 days for which an employee takes a leave under this section may consist of unpaid leave, but the employee may substitute vacation, personal or sick leave
6. Employer must provide paid leave for each day of leave that an employee takes after taking leave for 10 days
7. Benefit amount equals two-thirds of the employee’s regular rate of pay for the number of hours the employee would otherwise be normally scheduled to work **capped at \$200/day or \$10,000 in the aggregate**
 - i. For employees with variable hours, look at the number equal to the average number of hours worked over a 6-month period

Tax Credits for Paid Sick and Paid Family and Medical Leave (Applicable to private companies)

1. **For employers, there shall be allowed as a credit against the tax imposed under IRC 3111(a) an amount equal to 100% of the qualified sick leave wages paid by such employer. Section 3111(a) refers to social security taxes imposed at 6.2% of wages.**
 - i. **The credit is subject to caps on the qualified sick leave wages (ranging from \$200 to \$511 per day) and aggregate number of days to be taken into account**
 - ii. **The credit shall not exceed the tax imposed**
2. In the case of a self-employed individual, there shall be allowed a tax credit against the tax imposed by IRC Subtitle A in an amount equal to 100% of the qualified sick leave equivalent with respect to the individual.
3. **For employers, there shall be allowed as a credit against the tax imposed under IRS 3111(a) an amount equal to 100% of the qualified family leave wages paid by such employer.**
 - i. **The credit is subject to caps, such that it may not exceed \$200 per day per individual and, in the aggregate with respect to all quarters, \$10,000**
 - ii. **The credit shall not exceed the tax imposed**

4. In the case of a self-employed individual, there shall be allowed a tax credit against the tax imposed by IRC Subtitle A in an amount equal to 100% of the qualified family leave equivalent amount with respect to the individual.

5. Any wages required to be paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act shall not be considered wages for purposes of IRC 3111(a).

A helpful link with certain examples: <https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>