

IRS Bulletin for FFCRA Payroll Credits

On Friday March 20, 2020, the Department of Labor (DOL) and the Department of Treasury, Internal Revenue Service (IRS) jointly issued [IRS Bulletin 2020-57](#) informing employers that they can begin taking advantage of the payroll credits as required by the [Families First Coronavirus Relief Act](#) (FFCRA).

As a reminder, the FFCRA includes two components for businesses: the Emergency Paid Leave Sick Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA). Those components include:

- The **EPSLA** allows for two weeks (10 days) of paid sick leave or child care leave for COVID-19 reasons.
- The **EFMLEA** allows for twelve weeks of FMLA (first two weeks unpaid, ten weeks paid at 2/3 regular pay) for childcare reasons.

Employers will receive 100% reimbursement for the paid leave.

The IRS has committed itself to providing immediate relief by allowing for a dollar for dollar tax offset against payroll taxes owed by the employer. **To take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes.** If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form that will be released this week.

- **EPSLA Credit:** This refundable sick leave credit at the employee's regular rate of pay up to \$511/day and \$5,110 in the aggregate for a total of 10 days for the employee's own COVID-19 quarantine or symptoms related to COVID-19 while seeking treatment/testing OR at 2/3 of the employee's regular rate of pay up to \$200/day or \$2,000 in aggregate if the employee is caring for an individual with COVID-19 or is caring for a child due to school or daycare closures.
- **EFMLEA Credit:** This refundable child care leave credit up to 2/3 of the employee's regular rate of pay up to \$200/day or \$10,000 in aggregate for up to 10 weeks of qualifying leave for employees unable to work due to a need to care for a child whose school or daycare is closed. ***Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance for the employee while on this leave.***

HOW THE CREDITS WORK

Employers are required to withhold federal income taxes and are responsible for collecting the employee share of Social Security and Medicare taxes when employees are paid. Employers are then required to deposit these taxes with the IRS and file quarterly payroll tax returns (Form 941) with the IRS.

Employers that provide EPSLA and EFMLEA paid leave will be allowed to retain an amount of the payroll taxes equal to the amounts of leave that was paid rather than deposit those taxes with the IRS. This includes federal income taxes, Social Security and Medicare taxes and the employer share of Social Security and Medicare taxes with respect to ALL employees.

If the amount of payroll taxes is not enough to cover the paid leaves, employers will be able to file a request for an accelerated payment from the IRS. Details on the request process will be released by the IRS.

The Bulletin provides the following illustrative 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 childcare 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 EMPLOYERS

The DOL will provide an exemption from the leave requirements related to EFMLEA paid leave for businesses with fewer than 50 employees when those requirements will “jeopardize the ability of the business to continue”. This exemption will be based on simple and clear criteria and the DOL will provide emergency guidance on this standard.

NON-ENFORCEMENT PERIOD

The DOL is expected to issue a temporary non-enforcement policy that provides a period of time for employers to come into compliance with the Act. Under this policy, the DOL 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. The DOL will instead focus on compliance assistance during the 30-day period.

Takeaway:

Now that the IRS has issued this guidance, employers can begin to take action. For detailed filing information, employers are strongly encouraged to work with their tax professionals to understand their options and eligibility for these credits.