
CLIENT ALERT | FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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Small and midsize employers can begin taking advantage of two new refundable payroll tax credits, designed to immediately and fully reimburse them, dollar-for-dollar, for the cost of providing Coronavirus-related leave to their employees. This relief to employees and small and midsize businesses (defined as fewer than 500 employees) is provided under the Families First Coronavirus Response Act (Act), signed by President Trump on March 18, 2020. This Act provides employees with paid leave (related to their own health needs or to care for a family member) and will enable employers to keep their workers on their payrolls, while ensuring that workers are not forced to choose between their paychecks and the public health measures needed to combat the virus.

This article does not address an existing provision of the tax law, Section 139, enacted in 2002, that allows employers to make “qualified disaster relief payments” to employees to assist them in managing the COVID-19 crisis, which is discussed in a separate article.

PAID LEAVE FOR WORKERS

The Act provides that employees of eligible employers can receive two weeks (up to 80 hours) of paid sick leave at 100% of the employee's pay where the employee is unable to work because the employee is quarantined, and/or experiencing COVID-19 symptoms, and seeking a medical diagnosis. An employee who is unable to work because of a need to care for an individual subject to quarantine, to care for a child whose school is closed or child care provider is unavailable for reasons related to COVID-19, and/or the employee is experiencing substantially similar conditions as specified by the U.S. Department of Health and Human Services can receive two weeks (up to 80 hours) of paid sick leave at 2/3 the employee's pay. An employee who is unable to work due to a need to care for a child whose school is closed, or child care provider is unavailable for reasons related to COVID-19, may in some instances receive up to an additional 10 weeks of expanded paid family and medical leave at 2/3 the employee's pay.

PAID SICK LEAVE EMPLOYER CREDIT

For an employee who is unable to work because of Coronavirus quarantine or self-quarantine or has Coronavirus symptoms and is seeking a medical diagnosis, eligible employers may receive a refundable sick leave credit for sick leave at the employee's regular rate of pay, up to \$511 per day and \$5,110 in the aggregate, for a total of 10 days.

For an employee who is caring for someone with Coronavirus, or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to the Coronavirus, eligible employers may claim a credit for two-thirds of the employee's regular rate of pay, up to \$200 per day and \$2,000 in the aggregate, for up to 10 days. 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.

CHILD CARE LEAVE EMPLOYER CREDIT

In addition to the sick leave credit, for an employee who is unable to work because of a need to care for a child whose school or child care facility is closed or whose child care provider is unavailable due to the Coronavirus, eligible employers may receive a refundable child care leave credit. This credit is equal to two-thirds of the employee's regular pay, capped at \$200 per day or \$10,000 in the aggregate. Up to 10 weeks of qualifying leave can be counted towards the child care leave credit. 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.

PROMPT PAYMENT FOR THE COST OF PROVIDING THE LEAVE

When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns (Form 941 series) with the IRS.

Eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.

The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able to file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. The details of this new, expedited procedure will be announced next week.

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 child care 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 BUSINESS EXEMPTION

Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or child care unavailability where the requirements would jeopardize the ability of the business to continue. The exemption will be available on the basis of simple and clear criteria that make it available in circumstances involving jeopardy to the viability of an employer's business as a going concern. The U.S. Department of Labor will provide emergency guidance and rulemaking to clearly articulate this standard.

NON-ENFORCEMENT PERIOD

The U.S. Department of Labor will be issuing a temporary non-enforcement policy that provides a period of time for employers to come into compliance with the Act. Under this policy, the U.S. Department of Labor 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. U.S. Department of Labor will instead focus on compliance assistance during the 30-day period.

The statements above are just a few of the issues that employers are currently experiencing. As more and more guidance and relief are being provided by state and federal governments, employers should discuss its specific issue with its legal representative as the legal landscape is changing day-to-day.

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Litchfield Cavo operates out of 22 offices, serving clients in more than 35 states nationwide. To find the best attorney to handle your case, please contact Michele M. Echols at 985.869.8700.

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DISCLAIMER: This article is a guide to point your company in the correct direction and should not be used as legal advice for your specific situation. In order to have your company's specific situation reviewed, contact a qualified tax attorney before relying on any commentary as each situation is unique and complex.

Sources: Thomsen Reuters/Tax & Accounting (2020). "Committee Report" for JCX-10-20, H.R. 6201. Retrieved from Thomson Reuters Checkpoint Edge.

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