

COVID-19: HIGHLIGHTS FROM THE IRS FAQs ON EMERGENCY PAID SICK AND FAMILY LEAVE TAX CREDITS FOR U.S.-BASED SMALL AND MID-SIZED EMPLOYERS

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We recently summarized the provisions from the Families First Coronavirus Response Act (“FFCRA”) that provide for tax credits for small employers to offset costs associated with paid sick leave and emergency FMLA benefits. The IRS has been compiling a set of [FAQs](#) regarding these tax credits, which covers a number of topics. Here are a few of the highlights:

- To claim the credits, eligible employers will report their total qualified leave wages and the related credits for each quarter on their federal employment tax returns (usually Form 941). In anticipation of the credits, employers may fund qualified leave wages, allocable qualified health plan expenses, and the employer’s share of Medicare tax on the qualified leave wages by either using federal employment taxes the employer has set aside for deposit with the IRS or by requesting an advance from the IRS.
- To substantiate eligibility for the medical and family leave credits, employers should obtain a statement from the employee requesting leave in which the employee provides:
 - The employee’s name;
 - The date(s) for which leave is requested;
 - A statement that the employee is not able to work (including telework) for that reason.
 - If the leave is requested due to a quarantine order or self-quarantine medical advice, the statement should include the governmental entity ordering quarantine or medical professional advising self-quarantine.
 - If the leave is due to school closing or lack of childcare availability, the statement should include the name(s) and age(s) of the affected child(ren), the name of the school or childcare provider that is unavailable, and a representation that no other person will be providing care for the child(ren) during the period for which the employee is requesting family leave. For children over 14 during daylight hours, the employee must include a statement that special circumstances exist that require childcare.

- The credits earned due to FFCRA-imposed medical and family leave may be increased by the amount of the employer's qualified health plan expenses. For purposes of calculating the credit, this amount includes both the portion paid by the employer and the cost paid by the employee with pre-tax salary reduction contributions. Any amounts paid by the employee with after-tax contributions should not be included.
- Employers who sponsor fully-insured group health plans may use any reasonable method to determine and allocate the plan expenses, including :
 - The COBRA applicable premium for the employee (typically available from the insurer);
 - 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.
- Employers who sponsor self-insured group health plans may use any reasonable method to determine and allocate the plan expenses, including:
 - The COBRA applicable premium for the employee typically available from the administrator; or
 - Any reasonable actuarial method to determine the estimated expenses of the plan for the period in question.
- Tax credits for qualified leave wages apply to wages paid between April 1, 2020 and December 31, 2020. Payments made after December 31, 2020 for periods of leave taken between April 1, 2020 and December 31, 2020 are also eligible for the credits.

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