



News & Types: Client Advisories

Coronavirus Relief Bill Update

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Practices: Employment, Labor & Benefits

EXECUTIVE SUMMARY

Under the mandate of the Families First Coronavirus Response Act (“Act”), the U.S. Department of Labor (“DOL”) announced that the effective date is April 1 rather than April 2. The DOL issued a poster. The poster can be found at ([link](#)).

In addition, the U.S. Treasury Department, the Internal Revenue Service (“IRS”), and the DOL announced two new refundable tax-credits available to small and midsized employers. These two new refundable tax-credits aim to reimburse employers, “dollar-for-dollar,” for the costs of providing leave to their employees for reasons related to COVID-19.

BACKGROUND

On March 18, 2020, President Trump signed into law the Families First Coronavirus Response, H.R. 6201, (the “Families First Act” or the “Act”). Please see our prior article for more background ([link](#)).

REFUNDABLE PAID SICK LEAVE CREDITS AND THE PAID CHILD CARE LEAVE CREDIT FOR ELIGIBLE EMPLOYERS EFFECTIVE APRIL 1, 2020

The IRS provides that “[e]ligible employers are businesses and tax-exempt organizations with fewer than 500 employees that are required to provide emergency paid sick leave and emergency paid family and medical leave” under the Families First Act. Equivalent credits are available to self-employed individuals based on similar circumstances.

Eligible employers may receive two types of Refundable Sick Leave Credits, as well as a Child Care Leave Credit:

1. For an employee who is unable to work because of COVID-19 quarantine or self-quarantine, or who is suffering from COVID-19 related symptoms and is seeking a medical diagnosis, 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.
2. For an employee who is caring for someone with COVID-19 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 COVID-19, 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.

3. For an employee who has been employed for at least 30 days before his or her leave request and 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 COVID-19, two-thirds of the employee's regular pay, capped at \$200 per day or \$10,000 (clarification from the IRS is needed whether the maximum is \$10,000 or \$12,000 because the IRS notice and Act state it is \$10,000, but the DOL guidance states it is \$12,000) in the aggregate, for up to 10 weeks.

In addition, the tax credit may be increased by certain qualified health plan expenses that are allocable to the wages paid as emergency sick leave pay.

The tax credits will allow eligible employers to retain an amount of federal payroll taxes that they are usually required to deposit quarterly. The amount of federal payroll taxes that eligible employers are permitted to retain will be equal to the amount of qualifying sick and child care leave that they paid to their employees. The IRS identified the following payroll taxes available for retention: “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*.”

The IRS provided the following examples:

- If an eligible employer provides required paid sick leave in the amount of \$5,000 to its employee and would otherwise be required to deposit \$8,000 in payroll taxes, the employer would be allowed to use \$5,000 of the \$8,000 for the paid sick leave and only deposit \$3,000 on the quarterly deposit date.
- If an eligible employer provides required sick leave in the amount of \$10,000 and would otherwise be required to deposit \$8,000 in payroll taxes, the employer would be allowed to use the entire \$8,000 for the paid sick leave and file a request for an accelerated payment of \$2,000.

If the employer's federal payroll taxes are less than the cost of qualified sick and child care leave paid, the employer will still be able to receive a refund and an accelerated payment from the IRS. The IRS expects to process these requests within two weeks.

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.

The IRS has announced that it would release more guidance this week.

WHAT SHOULD COVERED EMPLOYERS DO?

Talk to your accountants regarding taking advantage of the newly available tax credits.

In addition, each employer must notify employees of the availability of FMLA leave and Emergency Paid Sick Leave by posting in conspicuous places on the premises of the employer where notices to employees are customarily posted.

An employer can satisfy this requirement by emailing or directly mailing the notice to employees or posting the notice on an employee informational website (internal or external that the employees can access). The notice can be found at ([link](#)).

It is unlawful for an employer to interfere with the exercise of rights under the Families First Act or to discharge or in any other manner discriminate against (including retaliating against) any individual, including a job applicant, for opposing any practice made unlawful by this Act.

The U.S. Department of Labor will issue a temporary non-enforcement policy for the first 30 days after the Act takes effect. This temporary non-enforcement period will provide a grace-period for employers to come into compliance, as long as the employer acted reasonably and in good faith to comply. Instead of bringing enforcement actions, the U.S. Department of Labor will focus on compliance assistance during this grace-period.

Please contact your relationship attorney or a member of the Employment Group with any questions regarding the Families First Act, including questions related to compliance with the Americans With Disabilities Act, OSHA, the Fair Labor Standards Act, wage and hour compliance, sick leave, working from home policies, immigration, delayed litigation, and any business contract issues, such as the application of force majeure provisions.