**Treasury Department, Internal Revenue Service, and Department of Labor Guidance Related to Families First Coronavirus Response Act**

***Note: The Families First Coronavirus Response Act expired on December 31, 2020. On December 27, 2020, President Trump signed a $900 billion COVID relief package that provides tax credits for employers who continue to provide Families First Coronavirus Response Act (FFCRA) leave in the first quarter of 2021. While the bill does not extend the leave provisions under FFCRA, it does allow private employers to claim the tax credits for wages they pay to employees taking leave consistent with the existing FFCRA framework between January 1, 2021 and March 31, 2021.***

The U.S. Treasury Department, Internal Revenue Service (IRS), and the U.S. Department of Labor (DOL) announced that 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 pursuant to the Families First Coronavirus Response Act (Act), signed by President Trump on March 18. See our blog for details about the Act [here.](https://www.myhrcounsel.com/blog/2020/3/19/families-first-coronavirus-response-act)

Currently available details and guidance from the Treasury Department, IRS, and DOL on the tax credits and the Act include:

**Complete and Quick Coverage**

Employers receive 100% reimbursement for paid leave pursuant to the Act.

* + Health insurance costs are also included in the credit.
  + Employers face no payroll tax liability.
  + Self-employed individuals receive an equivalent credit.
  + An immediate dollar-for-dollar tax offset against payroll taxes will be provided
  + Where a refund is owed, the IRS will send the refund as quickly as possible.

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](https://www.irs.gov/forms-pubs/about-form-941) series) with the IRS.

Under guidance that will be released this week, eligible employers who pay qualifying sick or expanded FMLA (child care) leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying 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 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 this week.

**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. DOL will provide emergency guidance and rulemaking to clearly articulate this standard.

**Non-Enforcement Period**

DOL 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, 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. DOL will instead focus on compliance assistance during the 30-day period.

For more information about these credits and other relief, visit [Coronavirus Tax Relief](https://www.irs.gov/coronavirus) on IRS.gov.

Please note this current global emergency and applicable laws, regulations, proposals, guidance, advice, and responses change rapidly. We strive to keep you up to date as much as possible, but this blog article is intended for general informational purposes only and should not be construed as legal advice or opinion. Contact myHRcounsel with questions concerning specific facts and circumstances.