



March 23, 2020

## **Treasury, IRS and Labor Announce Plan to Implement Coronavirus-Related Paid Leave for Workers and Tax Credits for Small and Midsize Businesses**

In our previous alert on [Responding to the Coronavirus – Paid Sick Leave](#), we advised that on March 18, 2020, President Donald Trump signed into law the Families First Coronavirus Response Act (“FFCRA”), requiring employers to provide paid sick leave and paid family leave for eligible employees affected by the Coronavirus of COVID-19. These provisions were to take effect 15 days after the date of enactment, or April 2, 2020. The Act also allows for employers to a payroll tax credit for required paid sick leave and family leave, in order to enable employers to keep workers on their payrolls.

On March 20, 2020, the U.S. Treasury Department, Internal Revenue Services (“IRS”) and the U.S. Department of Labor announced a plan to implement the Act so that eligible employers can begin to immediately take advantage of two new refundable payroll tax credits to reimburse them, dollar-for-dollar, for the cost of providing Coronavirus-related leave to their employees. Eligible employers are businesses and tax-exempt organizations with fewer than 500 employees that are required to provide emergency paid sick leave and family leave under the Act. Eligible employers will be able to claim these credits based on qualifying leave provided between the effective date and December 31, 2020. Equivalent credits are also available to self-employed individuals based on similar circumstances.

## **Complete Reimbursement for Employers**

### **Paid Sick Leave Credit**

The Act provides that employees who are unable to work due to COVID-19 because of an order to quarantine or isolate, self-quarantine, or to seek medical diagnosis, may receive up to 80 hours of paid sick leave at 100% of the employee's pay, up to \$511 per day and \$5,110 in the aggregate, for a total of ten (10) days.

Employees who are unable to work because of COVID-19 to care for another individual who is quarantined or isolated, or to care for a child whose school or child care facility is closed, or who is experiencing similar conditions as specified by the U.S. Department of Health and Human Services, may receive up to 80 hours of paid sick leave at 2/3 of the employee's pay, up to \$200 per day and \$2,000 in the aggregate, for a total of ten (10) days.

Employers are allowed a tax credit for each calendar quarter in an amount equal to 100 percent of the qualified sick leave wages paid. Employers are also entitled to an additional tax credit based on costs to maintain health insurance coverage for the eligible employee during the leave period.

### **Paid Family Leave Credit**

In addition to the sick leave, employees who are unable to work to care for a child whose school has been closed or child care provider is unavailable due to COVID-19 may receive up to an additional ten weeks of expanded paid family leave at 2/3 the employee's pay, up to \$200 per day or \$10,000 in the aggregate. Up to ten (10) weeks of qualifying leave can be counted towards the paid family leave credit.

Employers are allowed a tax credit for each calendar quarter in an amount equal to 100 percent of the qualified family leave wages paid. Employers are entitled to an additional tax credit based on costs to maintain health insurance coverage for the eligible employee during the leave period.

## **Prompt Funding For the Cost of Providing Leave**

Typically, employers are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare Taxes. The employers are then required to deposit the payroll taxes with the IRS and file quarterly payroll tax returns.

Under guidance that will be released next week, eligible employers who pay qualified sick leave or family leave under the Act may retain an amount of the payroll taxes equal to the amount of qualifying sick leave and family leave paid, rather than deposit them with the IRS. The payroll taxes that may be retained include:

- federal income taxes
- employee's share of Social Security and Medicare taxes

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Moreover, if there are insufficient payroll taxes to cover the cost of qualified sick leave and family leave paid, employers may file a request for an accelerated payment from the IRS. The IRS expects to process such requests in two weeks or less. The details of this expedited process will be available later in the week.

The IRS provides examples of funding scenarios including the following:

Example 1: If an eligible employer pays \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, the employer could use up to \$5,000 of the \$8,000 payroll taxes to make qualified leave payments. The employer would be required to deposit the remaining \$3,000 on its next regular deposit date.

Example 2: If an eligible employer pays \$10,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, the employer could use the entire \$8,000 of payroll taxes in order to make qualifying leave payments, and file a request for an accelerated credit for the remaining \$2,000.

### **Small Business Protection**

The Act provides protection to certain small businesses with fewer than 50 employees. The Secretary of Labor may exclude such employers from the paid leave requirements, if the requirements would jeopardize the viability of the business as a going concern. The Department of Labor will provide emergency guidance and rulemaking to clearly articulate this standard.

### **Non-Enforcement Period for Good Faith Compliance**

Finally, the Department of Labor announced that it will be issuing a temporary non-enforcement policy to allow time for employers to come into compliance with the Act. Under the policy, the Department of Labor will not bring an enforcement action against any employer for violations of the Act during the 30-day period, so long as the employer acted reasonably and in good faith to comply, but will instead focus on compliance assistance.

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If you have any questions concerning this alert, please do not hesitate to contact us.

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