



Employer Payroll Tax Credits – Families First Coronavirus Response Act (FFCRA) – Family Leave and Sick Time

As a business owner (employer), you may be subject to additional employment and labor laws as a result of the recently passed Families First Coronavirus Response Act, H.R. 6201 (FFCRA). We recommend that you consult your labor law attorney for specifics on the rules and regulation associated with FFCRA.

FFCRA created additional employee and labor laws that are in effect for the period April 1 through December 31, 2020. FFCRA created further requirements for employers with fewer than 500 employees and certain public-sector employers.

Family Leave – Care for Employee’s Child

FFCRA expanded FMLA leave to provide for a 12 week leave period, the first 10 days of which may be unpaid, although an employee may opt to utilize normal earned paid time off during this period. Eligible employees are those that have been employed for 30 days prior to April 2, 2020. Also, the employee could receive two weeks of required sick pay during this period (see below). During the following 10 weeks of the 12-week covered period, FFCRA states that an eligible employee shall be paid at a rate of two-thirds of regular pay, not to exceed \$200 per day, or \$10,000 total (10 weeks x 5 days x \$200/day). This family leave provision only applies to an employee that is unable to work (or telework) due to a need to care for a son or daughter under age 18 if the school or place of child care has been closed or is unavailable as a result of COVID-19 public health emergency. Also, an employer must restore the employee’s job at the end of the leave period.

Family Leave Pay is not subject to the employer’s share of 6.2% Social Security tax.

Paid Sick Leave

FFCRA also provides for two weeks (10 days) of required sick pay for all employees, regardless of hire date. Employees who are healthcare workers or emergency responders may be excluded. Employers are required to pay sick leave for employees under the following conditions where the employee:

- 1) is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- 2) has been advised by a healthcare provider to self-quarantine related to COVID-19;
- 3) is experiencing COVID 19 symptoms and is seeking medical diagnosis;
- 4) is caring for an individual subject to a quarantine order or advised to self-quarantine.
- 5) is caring for his or her child whose school or place of care is closed or unavailable due to COVID-19 related reasons;
- 6) is experiencing any other substantially-similar condition specified by the US Department of Health and Human Services.

Employers shall be required to pay this additional sick leave in the amount of 80 hours for full-time employees. For part time employees, the number of hours paid is limited to the average hours such employee would have worked in a normal two-week period. If the leave is for one of the first 3 reasons above the employee is to be paid their regular rate of pay, not to exceed \$511 per day, or a total of \$5,110 for the 10-day covered period. If the leave is for reasons 4 through 6 above, the employee is to be paid at a rate of two-thirds his or her normal rate, with a daily maximum of \$200 per day, or \$2,000 total during the 10-day period.

Employers covered under FFCRA must post notice of the above items through a poster produced by the Department of Labor. The poster is to be placed in a conspicuous place on employer's premises and can also be provided electronically to those employees that may be working remotely.

Sick Pay under FFCRA is not subject to the employer's share of 6.2% Social Security tax.

Small Business Exemption

Small businesses with fewer than 50 employees may be excluded when the Act's leave requirements under the "small business exemption" would jeopardize the viability of the business as a going concern. This exemption only applies to leave for child-care purposes, and none of the other FFCRA-leave purposes. Employers should be careful in using this exemption and consult with legal counsel when evaluating such.

Employer Payroll Tax Credits for Family Leave and Paid Sick Time

It was the intention of Congress that employers be reimbursed for the payroll costs under these new provisions of FFCRA and therefore created employer payroll tax credits.

Employers are eligible to claim a payroll tax credit for 100% of the qualified family leave or sick time. The payroll credits will offset the employer's share of social security tax (6.2%). The credit is refundable if the credit is in excess of the employer's share of social security tax. Credit is claimed by reducing the amount of 941 tax deposit payments typically made.

Compensation paid to an employee under the expanded family leave or sick time provisions of FFCRA is exempt from the employer's share of social security tax (6.2%).

Eligible employers can claim a credit against quarterly payroll taxes for 100% of the gross wages paid under FFCRA, plus the employer's share of Medicare tax (1.45%). The credit is also increased by the employer's share of qualified health plan coverage expenses allocated to the employee's wages.

Credits claimed on the wages paid under FFCRA cannot be used to claim payroll credits under the Retention Credit Program as a result of the CARES Act, see below.

Any wages paid under the Family Leave or Sick time rules cannot be used as wages under the SBA Payment Protection Loan Program.

Payroll Administration

It is important that as an employer you are aware of your responsibilities and have communicated with your payroll provider or internal payroll team on the provisions contained in FFCRA. You will likely need to make changes to your payroll processing and reporting process. You will need to alert your payroll provider each pay period during April 1 through December 31 if you have wages being paid under the provisions of FFCRA so that the correct wage and payroll taxes will be computed, and that the correct payroll tax credits will be claimed on the quarterly payroll tax returns. It may also be desirable to set up separate payroll general ledger accounts in your accounting system to track pay under these various classifications. For instance, employers may want to set up specific payroll items in their payroll systems to address Family Leave and Sick Leave, adjusting pay rates and the employer 6.2% social security exemption.

Employee Retention Credits

In addition to the family and sick leave credits, a third payroll tax credit was passed under the CARES Act. This credit relates only to businesses that were required to close by government agency order or have suffered a significant decline in revenue (greater than 50%). Also, a business that applies for SBA loan funding under the new Paycheck Protection Program (PPP) is NOT eligible to claim Employee Retention Credits. We will not be addressing the specifics of this program in this communication, but if you believe your business may be eligible for these credits, we suggest contacting your payroll provider or contacting your Frankel Zacharia contact for further information.