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Some Employers Eligible for Reimbursement of Employee Paid Leave Related to COVID-19



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UPDATE: The IRS released [this guidance](#) on March 30 regarding the payroll tax credits, stating that credits would for qualified wages paid beginning April 1 through Dec. 31, 2020.

As noted and discussed last week on [our HR Law Blog](#), the **Families First Coronavirus Response Act** (Response Act) was signed into law on March 18, 2020. Among other things, the Response Act provides employees of businesses with fewer than 500 employees the ability to take up to 12 weeks of emergency paid leave due to an employee's inability to work because of a coronavirus-related matter.

Perhaps most importantly to employers, the Response Act also provides for dollar-for-dollar reimbursement for that paid leave provided to employees through refundable payroll tax credits. Equivalent credits are also available for self-employed individuals.

How the Tax Credit Works

The refundable payroll tax credit covers withheld federal income taxes and the employer's and employee's share of Social Security and Medicare Taxes for all employees, which are deposited with the IRS by filing quarterly payroll tax returns.

According to the IRS, employers may retain an amount of payroll taxes equal to the amount of COVID-19 related sick/paid leave they have paid, instead of depositing them with the IRS. If the amount of this special sick/paid leave exceeds the employer's amount of payroll taxes required to be deposited, the employer will be able to file a request for an accelerated payment from the IRS. Further guidance, including the details of the expedited procedure to request such payment are expected to be announced this week.

As an example, the IRS explained that if an employer has paid \$5,000 in COVID-19 related sick/paid leave and is required to deposit \$8,000 in payroll taxes, the employer may retain \$5,000 and instead deposit only \$3,000 in payroll taxes. Or, if the employer has paid \$10,000 in the special sick/paid leave and is required to deposit \$8,000 in payroll taxes, the employer may file a request for an accelerated credit of \$2,000.

Caps on Tax Credits

The refundable payroll tax credits are limited to the amounts of COVID-19 related sick/paid leave employers are required to provide, and those requirements are capped depending on the reason why the leave is taken. Examples of these limits include:

- If sick time is taken because an employee is subject to federal, state or local quarantine related to COVID-19, the employee is eligible to receive paid sick time capped at \$511 per day and \$5,110 in the aggregate.
- If an employee is taking sick time because the employee is caring for an individual who is subject to quarantine, the paid sick time is capped at \$200 per day and \$2,000 in the aggregate.

- If the employee is taking paid leave to care for a child because the child's school has been closed, the paid leave is capped at \$200 per day and \$10,000 in the aggregate.

The requirements under the Response Act go into effect no later than April 2 and expire Dec. 31, 2020.

For more information on the Response Act tax benefits for employers, please contact a member of our [Tax Planning and Compliance Practice](#) or our [Human Resources and Employment Practice](#).