

## **Families First Coronavirus Response Act**

The legislation would provide paid sick leave and paid family leave to address work and employment interruptions related to the COVID-19 coronavirus. Both benefits are funded dollar-for-dollar for employers through a refundable tax credit program administered by the Internal Revenue Service.

### **Paid Sick Leave and Corresponding Credit Divisions E and G of the Act**

#### ***Paid Sick Leave***

- Division E of the Act provides a 100% refundable tax credit for small and medium-size businesses with under 500 employees to provide paid sick leave to employees affected by COVID-19. This provision is targeted to specific employees who are unable to work (or telework) and who meet any one of the following six conditions:
  1. They are subject to a Federal, State, or local quarantine or isolation order (“isolation order”) related to COVID-19;
  2. They have been advised by a health care provider to self-quarantine due to concerns related to COVID-19 (“quarantined employee”);
  3. They are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
  4. They are caring for an individual who is subject to an isolation order or is a quarantined employee;
  5. They are caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or
  6. They are experiencing any other substantially similar condition as specified by the Secretary of Health and Human Services.
- Eligible full-time employees can receive up to 80 hours of paid sick leave, while part time employees are eligible for leave based on their recent work history.
- Paid sick leave is calculated based on an employee’s regular compensation but is capped at \$511 per day (and \$5,110 in the aggregate) for employees who fall into the first three eligibility categories, relating to the employee’s own health.
- For employees who fall into the two care-related categories and the catch-all category, paid leave is two-thirds of regular compensation and the wage cap is \$200 per day (and \$2,000 in the aggregate), with the lower amount designed to ensure that

such employees are accommodated for but also have an incentive to return to work (or telework) as soon as possible.

- Recognizing the unique role they play in responding to the COVID-19 outbreak and recognizing that, as medical professionals, they will act responsibly, the Act would allow an employer of an employee who is a health care provider or an emergency responder to elect out of providing paid sick leave to these employees.
- The Labor Department is granted broad authority to exempt from the child-care related leave requirement small businesses with fewer than 50 employees if the requirement to provide leave would jeopardize the viability of the business as a going concern.

### ***Refundable Paid Sick Leave Tax Credit***

- Every dollar of paid sick leave that employers are required to pay to eligible employees under the Act is offset by a refundable federal employment tax credit. As a refundable credit, employers receive full reimbursement for the paid sick leave regardless of their actual tax liability.
- Employers eligible for the credit include all employers with fewer than 500 employees; governmental employers are not eligible for the sick leave credit.
- The formula for computing the credit tracks, dollar-for-dollar, the paid sick leave provided for under the Act:
  - The credit amount is not to exceed the amount of required sick leave wages paid to an employee for any day (or portion thereof) of:
    - One hundred percent of wages up to \$511 per day for employees (1) subject to quarantine order, (2) advised by a health care provider to self-quarantine, or (3) experiencing symptoms of COVID-19 and seeking a medical diagnosis.
    - Two-thirds of wages up to \$200 per day for employees (1) caring for an individual subject to quarantine order or caring for an individual advised by a health care provider to self-quarantine; or (2) caring for a child whose school or place of business is closed.
  - The total credit available is capped at 10 days, tracking the paid sick leave requirement.
  - Beyond covered sick pay, to the extent that an employer continues an employee's health insurance coverage while the employee is on paid sick leave, the credit is grossed up to include the employer's expense for this. In addition, covered sick pay is exempt from employment taxes otherwise imposed on the employer. These provisions ensure that the employer is made whole for its obligation to pay covered sick leave.

- A parallel credit mechanism is included for independent contractors and partners, to ensure that the choice of entity form does not determine a business' eligibility for benefits under the Act.
- The refundable credit is reported on the employer's quarterly IRS Form 941 employment tax returns. Those returns report income and employment taxes withheld by the employer from employee wages, as well as the employer's own employment taxes.
- Although employment tax returns are filed quarterly, payment of employment tax liabilities is generally required to be made on the following more frequent payment schedule:
  - Employers who accumulate \$100,000 or more of employment tax liabilities are required to deposit those liabilities with the IRS the next banking day;
  - Employers who accumulate less than \$100,000 but more than \$50,000 of liabilities are required to deposit them on a bi-weekly basis;
  - Employers who accumulate less than \$50,000 but more than \$2,500 of liabilities are required to deposit them on a monthly basis; and
  - Employers who accumulate less than \$2,500 of liabilities can pay those liabilities with their quarterly returns.
- Because quarterly returns are not filed until some period of time after wages are required to be paid, the Act recognizes that the Treasury Department and IRS will exercise broad discretion in ensuring that accrued tax credits are effectively advanced to employers as soon as possible.
  - Under the payment schedule set forth above, most employers will have funds on hand, including withheld income and employment taxes that they would normally be required to hold in escrow and pay to the IRS.
  - The Treasury Department estimates that income and employment taxes withheld from employees who are not on leave will be adequate to cover, on a current basis, covered sick leave being paid to approximately 25 percent of the employer's work force.
- As contemplated by the Act, the Treasury Department and IRS plan to utilize their broad grants of regulatory authority, as well as specific grants of authority included in the Act, along with the IRS's ability to administer the tax law consistent with Congressional intent, to facilitate employers accessing funds to pay covered sick leave. More specifically, the Treasury Department and IRS plan to issue guidance that would, among other relief:

- Allow employers to access for the purpose of paying sick leave any employment tax liabilities otherwise required to be paid to the IRS after enactment of the Act, in contemplation of receiving refundable credits; and
- On a current basis as sick leave is paid, allow employers to access for the purpose of paying such leave all withheld income and employment tax liabilities otherwise required to be paid to the IRS.
- For employers who have more than 25 percent of their work force on covered sick leave and therefore may not be able to fund such leave with current employment tax withholdings or other funds, the IRS plans to implement a system for employers to accelerate payment of credits provided for by the Act.
  - This system would be available for an expected small number of employers who cannot fund their covered sick leave through current employment tax withholdings and other post-enactment liabilities that the guidance referenced above would allow them to access.
  - For this small number of employers, the IRS has already developed a draft form for claiming accelerated refundable credits and is working to have a system in place for processing those forms shortly after enactment.
- The refundable sick leave credit sunsets on December 31, 2020. This is not the creation of a permanent new program.

**Paid Family Leave and Corresponding Credit  
Divisions C and G of the Act**

***Paid Family Leave***

- Division C of the Act allows small and medium-size businesses with under 500 employees to provide paid family leave to certain employees affected by COVID-19. This provision is targeted to specific employees who are unable to work (or telework) and who meet the following condition:
  - They are caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
- Eligible full-time employees can receive family leave pay at a rate not less than two-thirds of their regular pay, ensuring that such employees are accommodated for but also have an incentive to return to work (or telework) as soon as possible. The paid family leave pay is capped at \$200 per day (and \$10,000 in the aggregate).
- Under provisions of existing law, an eligible employee is limited to 12 weeks of family leave pay in any one calendar year, and this limit applies under the Act as

well.

- Recognizing the unique role they play in responding to the COVID-19 outbreak and recognizing that, as medical professionals, they will act responsibly, the Act allows an employer of an employee who is a health care provider or an emergency responder to elect out of providing paid family leave to these employees.
- The Labor Department is also granted broad authority to exempt from the paid family leave requirement small businesses with fewer than 50 employees if the requirement to provide leave would jeopardize the viability of the business as a going concern.

### ***Refundable Paid Family Leave Credit***

- As with the paid sick leave credit, the family leave credit is tied dollar-for-dollar to the requirement to provide paid family leave which, as noted above, is limited to two-thirds of the employee's regular rate of pay.
- Employers eligible for the credit include all employers with fewer than 500 employees; governmental employers are not eligible for the credit.
- The family leave credit is reported on quarterly employment tax returns. In anticipation of receiving credit, employers can fund family leave by accessing employment taxes that would otherwise be withheld and set aside for deposit with the IRS.
- The credit is available for employees unable to work (including telework) because they have a need for leave to care for a son or daughter if the school or place of care of such son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to a COVID-19 related public health emergency.
- The formula for computing the credit tracks, dollar-for-dollar, the family leave provided for under the Act:
  - The credit is triggered only after a covered employee has taken 10 days of paid sick leave (which the employer is entitled to sick leave credit for);
  - Credit shall not exceed the amount of required family leave wages paid to an employee for any day (or portion thereof) up to \$200, and in the aggregate with respect to all calendar quarters shall not exceed \$10,000.
- Like the sick leave credit, the family leave credit is refundable against the employer portion of employment tax liability, meaning that employers will receive a credit payment from the IRS even if the credit amount exceeds that liability.
- The mechanics of reporting and claiming the family leave credit work in the same manner as for the sick leave credit described above. The administrative procedures the Treasury Department and IRS are implementing to allow employers to access

funds to pay sick leave will be equally available for family leave.

- A parallel credit mechanism is included for independent contractors and partners, to ensure that the choice of entity form does not determine a business' eligibility for benefits under the Act.
- Beyond the covered family leave pay, to the extent that an employer is required to cover an employee's health insurance as a result of the Act, the credit is grossed up to include the employer's expense for this. In addition, covered family leave pay is exempt from employment taxes otherwise imposed on the employer. These provisions ensure that the employer is made whole for its obligation to pay covered family leave.
- The Department of Labor has regulatory authority to exempt small businesses with less than 50 employees from the paid leave requirement on financial hardship grounds.
- The credit sunsets on December 31, 2020. The legislation does not entail the creation of any permanent program.