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IN FOCUS

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Payroll Tax Credit for COVID-19 Sick and Family Leave

Beginning in April 2020, employers were entitled to payroll tax credits for paid leave required in response to the Coronavirus Disease 2019 (COVID-19) pandemic. For employers choosing to continue providing eligible paid leave, these tax credits have been extended through September 2021. The paid leave mandate, however, expired at the end of 2020. This In Focus provides an overview of the tax credits for paid leave initially provided in the Families First Coronavirus Response Act (FFCRA; P.L. 116-127) and later extended in the COVID-related Tax Relief Act of 2020, enacted as Division N, Title II, Subtitle B of the Consolidated Appropriations Act, 2021 (P.L. 116-260) and the American Rescue Plan Act (ARPA: P.L. 117-2).

Payroll Tax Credits for Paid Sick and Family Leave in FFCRA (P.L. 116-127)

FFCRA included an employer payroll tax credit for the paid sick and family leave *required* as part of FFCRA. This tax credit was intended to cover the cost to businesses of providing paid leave to address the COVID-19 pandemic.

2020 Leave Requirement

The Emergency Paid Sick Leave Act (Division E of P.L. 116-127) generally required private employers with fewer than 500 employees, and all government employers, to provide employees with two workweeks of paid sick leave for certain COVID-19-related leave purposes. The Emergency Family and Medical Leave Expansion Act (Division C of P.L. 116-127) generally provided employees of private employers with fewer than 500 employees, state and local government employees, and some federal employees expanded job-protected Family and Medical Leave Act (FMLA) leave for certain COVID-19-related caregiving responsibilities. Workers using the paid sick leave entitlement for their own needs were to be compensated at their regular rates of pay (subject to a per-day maximum), whereas leave used for caregiving was partially compensated (also subject to a per-day maximum). Employers were not required to compensate workers for the first two weeks of expanded FMLA, but after this period the leave was to be partially compensated by employers. For both sick and family leave, the law included provisions allowing employers to exclude health care providers and emergency responders from leave requirements, and allowing certain small businesses an exemption from providing leave for certain caregiving purposes.

For more, see CRS In Focus IF11487, *The Families First Coronavirus Response Act Leave Provisions*, by Sarah A. Donovan and Jon O. Shimabukuro.

Employer Payroll Taxes and Paid Leave Tax Credits

Under FFCRA, the employer payroll tax credit was computed using qualifying wages paid, and claimed against the employer's share of the Social Security or railroad retirement payroll tax in each calendar quarter. The Social Security trust funds were not generally affected by the tax credit, as a general fund transfer was provided to offset any reduction in trust fund revenues from the tax credit.

Employers typically deposit payroll taxes with the Internal Revenue Service (IRS) biweekly or monthly, and report employment taxes paid on quarterly federal tax returns filed within 30 days of the end of the calendar quarter. All types of employers—businesses, nonprofits, and governments—generally pay the employer share of payroll taxes for their employees.

Employers claimed tax credits for FFCRA paid leave on employment tax returns, which are generally filed quarterly (certain small employers may file annually). Employers could reduce payroll tax deposits in anticipation of receiving paid leave tax credits. Employers could also request an advance of tax credit amounts. The tax credit was refundable, meaning that if the amount of tax credits an employer claims exceeded payroll tax liability, the excess was received as a payment from the Treasury. Employers claiming the credit were required to include the amount claimed in gross income, for income tax purposes, offsetting the reduction in gross income from deducting wages paid (preventing a double benefit). Additionally, employers could not claim this credit for any wages taken into account for the purposes of calculating the Section 45S employer tax credit for paid family and medical leave. Government employers could not claim the FFCRA tax credits.

Qualifying Sick Leave Wages

Under FFCRA, an employer could claim a tax credit for 100% of the amount required to be paid in sick leave wages from April 1, 2020, through December 31, 2020. Sick leave wages were required to be paid for up to 80 hours (two workweeks) for a full-time employee (prorated for part-time employees). The maximum amount that was required to be paid to workers using FFCRA sick leave depended on the purpose for which the sick leave was taken.

Sick leave wages were limited to $511 per day for employees taking leave because (1) the employee was subject to a federal, state, or local quarantine or isolation order related to COVID-19; (2) the employee was advised by a health care provider to self-quarantine due to COVID-19; or (3) the employee was experiencing symptoms of COVID-19 and was seeking a medical diagnosis.

Sick leave wages were limited to $200 per day for employees taking leave because (a) the employee was caring for an individual (with whom the employee has a close personal relationship) who was experiencing a situation described in number (1) or (2) above; (b) the employee was caring for their own minor child whose school, place of care, or caregiver was closed or unavailable due to COVID-19; or (c) the employee was experiencing any other "substantially similar condition" as specified by the Secretary of Health and Human Services.

The tax credit amounts for paid sick leave could be increased by the amount employers paid for an employee's health care plan while they were on leave.

Qualifying Family and Medical Leave Wages

The employer tax credit for paid family leave was provided for employees taking leave to care for their own minor child whose school or place of care was closed due to COVID-19. For this component of the credit, the paid leave period began after an individual had already taken 10 days of leave for the family leave purpose described above. These 10 days of leave could consist of unpaid leave, or an employee could elect to use paid vacation, personal, or another form of paid leave (including the FFCRA paid sick leave). After this 10-day period, employees could receive a benefit from their employers that was at least two-thirds of the employee's usual pay, but not more than $200 per day. The tax credit for family leave wages was limited to $200 per day, and $10,000 total per employee. The tax credit amounts for paid family leave could also be increased by the amount employers pay for an employee's health care plan while they were on leave.

Income Tax Credit for Self-Employed Individuals

Self-employed individuals, including gig workers, were eligible for income tax credits similar to those described above. If individuals were unable to perform services in their trade or business for the sick leave purposes described above, they could qualify for an income tax credit equal to 100% of average daily self-employment income. Like the employer credits, this credit was limited to $511 per day for certain qualifying sick leave purposes, and $200 for other sick and qualified family leave purposes. The sick leave credit was limited to a maximum of 10 days (i.e., a maximum of $5,110 per worker). The family leave credit was limited to 50 days (i.e., a maximum of $10,000 per worker). For self-employed individuals, the income tax credit was refundable (meaning that if the tax credit amount exceeded the individual's income tax liability, the excess was received as a refund, or payment, from the Treasury).

Credit Extensions in P.L. 116-260

The COVID-related Tax Relief Act of 2020 extended the payroll tax credits for paid leave through March 31, 2021. The credits applied *as if* the corresponding employer mandates were also extended. The payroll tax credits for paid leave were thus available for employers voluntarily providing qualifying paid leave through March 31, 2021.

This legislation did not modify the overall caps on the paid leave amounts for which tax credits could be claimed. Thus, under P.L. 116-260, tax credits were limited to a total of 80 hours of paid COVID-19-related sick leave and 10 weeks of paid family leave for certain COVID-related childcare purposes from April 1, 2020, to March 31, 2021.

Credit Extensions in P.L. 117-2

APRA provides paid leave tax credits for paid leave provided April 1, 2021, through September 30, 2021. The paid leave tax credits in ARPA were similar to those provided in FFCRA and P.L. 116-260, with a few notable modifications, including the following:

- The 10-day limit on paid sick leave is reset for leave taken after March 31, 2021.
- The per-employee limit on qualified family leave wages is increased to $12,000 (or 60 days for self-employed individuals).
- Paid leave credits are allowed for sick leave taken to obtain a COVID-19 vaccine or illness related to immunization, or for leave taken while waiting for COVID-19 test results.
- State and local governments, as well as 501(c)(1) tax-exempt federal government entities, can claim the credit.
- The payroll tax credit is claimed against the employer's portion of the Medicare (HI) tax (the Medicare HI trust fund is not affected).
- Antidiscrimination rules require that leave must be provided to all employees.

Policy Considerations

Broadly, access to paid sick leave can reduce transmission of contagious viruses. Enhanced access to paid leave was one policy intended to reduce the spread of COVID-19.

The paid leave mandate in FFCRA was not comprehensive. The legislation expanded access to paid sick and family leave for employees at many small and mid-sized businesses. Employees of large businesses and certain worker groups, however, did not have guaranteed access to paid sick or family leave under FFCRA.

Similarly, the tax credits provided in FFCRA were not available to all employers, nor to all employers required to provide leave. State and local government employers, including school districts and public colleges and universities, were required to provide leave but not allowed tax credits to offset FFCRA leave mandate compliance costs. ARPA allowed certain government employers voluntarily choosing to provide leave access to tax credits.

The Joint Committee on Taxation (JCT) estimated that the paid leave tax credits in FFCRA would reduce tax revenue by $104.9 billion. Extending the tax credits through March 31, 2021, was estimated to reduce federal tax revenue by an additional $1.6 billion, while providing the credits from April 1, 2021, through September 30, 2021 was estimated to reduce federal revenues by $6.3 billion.

Additional Resource

- Internal Revenue Service, "COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs."

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