

## Temporary Rule: Paid Leave under the Families First Coronavirus Response Act

On April 1, 2020, the U.S. Department of Labor announced new action regarding the protections and relief offered by the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act, both part of the Families First Coronavirus Response Act (FFCRA). The FFCRA reimburses private employers with fewer than 500 employees with tax credits for the cost of providing employees with paid leave taken for specified reasons related to COVID-19.

The Department's Wage and Hour Division (WHD) posted a temporary rule issuing regulations pursuant to this new law, effective April 1, 2020. The regulations implement public health emergency leave under Title I of the Family and Medical Leave Act (FMLA) and emergency paid sick leave to assist working families facing public health emergencies arising out of the COVID-19 global pandemic. The leave provisions are created by a time-limited statutory authority established under the FFCRA and are set to expire on December 31, 2020. The temporary rule is effective from April 1, 2020 through December 31, 2020.

In this temporary rule, the department:

- Issues rules relevant to the administration of the FFCRA's paid leave requirements.
- Provides direction for administration of the Emergency Paid Sick Leave Act (EPSLA), which requires that certain employers provide up to 80 hours of paid sick leave to employees who need to take leave from work for certain specified reasons related to COVID-19. These reasons may include the following:
  - The employee or someone the employee is caring for is subject to a government quarantine order or has been advised by a health care provider to self-quarantine;
  - The employee is experiencing COVID-19 symptoms and is seeking medical attention; or,
  - The employee is caring for their son or daughter whose school or place of care is closed or whose childcare provider is unavailable for reasons related to COVID-19.
- Provides direction for administration of the Emergency Family and Medical Leave Expansion Act (EFMLEA), which requires that certain employers provide up to 10 weeks of paid, and two weeks unpaid, emergency family and medical leave to eligible employees if the employee is caring for their son or daughter whose school or place of care is closed or whose childcare provider is unavailable for reasons related to COVID-19.

Read more [here](#) and [here](#)

## COVID-19 and Employee Retention Credit

On March 31, 2020, the U.S. Treasury Department and the Internal Revenue Service launched the Employee Retention Credit. The refundable tax credit is 50 percent of up to \$10,000 in wages paid by an eligible employer whose business has been financially impacted by COVID-19. The credit is available to all employers regardless of size, including tax-exempt organizations, with the following two exceptions:

- State and local governments and their instrumentalities; and
- Small businesses who take small business loans.

Qualifying employers must fall into one of the following categories, which are calculated each

calendar quarter:

- The employer's business is fully or partially suspended by government order due to COVID-19 during the calendar quarter.
- The employer's gross receipts are below 50 percent of the comparable quarter in 2019. Once the employer's gross receipts go above 80 percent of a comparable quarter in 2019, they no longer qualify after the end of that quarter.

In calculating the credit, the amount of the credit is 50 percent of qualifying wages paid up to \$10,000 in total. Wages paid after March 12, 2020, and before January 1, 2021, are eligible for the credit. Wages considered for the credit are not limited to cash payments, but also include a portion of the cost of employer provided health care.

Qualifying wages are based on the average number of a business's employees in 2019 as follows:

- If the employer had 100 or fewer employees on average in 2019, the credit is based on wages paid to all employees, regardless if they worked or not. If the employees worked full-time and were paid for full-time work, then the employer still receives the credit.
- If the employer had more than 100 employees on average in 2019, then the credit is allowed only for wages paid to employees who did not work during the calendar quarter.

Employers may be immediately reimbursed for the credit by reducing their required deposits of payroll taxes that have been withheld from their employees' wages by the amount of the credit. Eligible employers will report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns, or Form 941, beginning with the second quarter. If the employer's employment tax deposits are not sufficient to cover the credit, the employer may receive an advance payment from the IRS by submitting Form 7200, [Advance Payment of Employer Credits Due to COVID-19](#). Form 7200 may also be used by eligible employers to request an advance of the Employee Retention Credit.

Read more [here](#)