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Q & A FOR COUNTY PAYROLL TAX ISSUES UNDER THE FFCRA AND CARES ACT

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The Families First Coronavirus Response Act ("FFCRA") imposed obligations on certain employers to make sick leave and family leave payments to employees affected by the Covid-19 virus and created payroll tax credits in an effort to alleviate some of the financial burden associated with the obligations. Subsequently, the federal government enacted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which created an additional payroll tax credit and allowed for a deferral of an employer's social security tax. While the payroll tax credits under each the FFCRA and CARES Act are **not** available to government employers, the payroll tax deferral is.

The Association and its general counsel von Briesen & Roper, s.c., have received many questions regarding county payroll obligations and procedures under the new laws. Our general counsel has prepared the Q & A below to provide information related to how county employers should manage their payroll taxes under the FFCRA and CARES Act.

This information should be reviewed carefully with corporation counsel to ensure county compliance with IRS regulations.

Q: Can counties claim the payroll tax credits under the FFCRA or CARES Act?

A: *No. Unfortunately, neither the FFCRA nor CARES Act allows the payroll tax credits to be claimed by the federal government, or the government of any state or political subdivision thereof, or any agency or instrumentality of the government. This means, for example, a county required to make sick leave or family leave payments to its employees under the Act cannot recoup the cost out of the employer's share of payroll taxes in the same way that a private sector employer may.*

Q: Are the sick leave and family leave payments under the FFCRA considered wages for purposes of the employer's 6.2% share of Social Security tax?

A: *No. The payments under the FFCRA are specifically excluded from the definition of wages on which an employer must pay its 6.2% share of the Social Security or Railroad Retirement Tax. Therefore, the employer need not pay its 6.2% share of these taxes on the sick leave and family leave payments made under the FFRCA.*

Q: Does a county have to pay the 1.45% Medicare tax on the sick leave and family leave payments made to employees under the FFCRA?

A: *Yes. The payments under the FFCRA are wages for purposes of the 1.45% employer share of Medicare taxes.*

Q: Should a county withhold the employee share of Social Security and Medicare tax and income taxes from the sick leave and family leave payments made under the FFCRA?

A: *Yes. The payments under the FFCRA are wages for purposes of the employee share of Social Security and Medicare and for income tax withholding.*

Q: What about the payroll tax deferral? Can counties defer the payment of payroll taxes as provided under the CARES Act?

A: *Yes. Under the CARES Act, employers (including counties) can defer complete remittance of their 6.2% share of Social Security tax for 2020 over two years. Specifically, counties may defer payment of 50% of their Social Security tax liability on wages paid in 2020 until December 31, 2021; the other 50% until December 31, 2022.*

The employer and employee's share of Medicare tax, the employee's share of Social Security and the employee's income tax withholding are ***not*** *affected by the Act and must be remitted.*

Q: Is additional legislation and regulation expected?

A: *Yes. Additional legislation and regulation concerning both the FFCRA and CARES Act are expected. The Association and its general counsel will continue to monitor these developments and provide updates as the guidance evolves.*

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