Tax Implications Q&A with IRS and DOL

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The plan for today

Karen Brehmer, Employee Retention Credit

Corey Walton, FFCRA, DOL perspective

Karen Brehmer, FFCRA, IRS perspective

Your questions
What is the Employee Retention Credit?

A fully refundable tax credit for employers equal to 50 percent of qualified wages (including allocable qualified health plan expenses) that Eligible Employers pay their employees.
Eligible Employer

Carry on a trade or business in 2020 that either:

1. Was fully or partially suspended by government order due to COVID-19

2. Experiences a significant decline in gross receipts

Not eligible:

- Governmental employers
- Self-employed individuals for own services and earnings
Operations fully or partially suspended

- Trade or business operations fully or partially suspended during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19
Significant Decline in gross receipts

- 1st quarter in which gross receipts for a calendar quarter in 2020 are less than 50% of its gross receipts for the same calendar quarter in 2019.

- A significant decline in gross receipts ends with the first calendar quarter that follows the first calendar quarter for which the employer’s 2020 gross receipts for the quarter are greater than 80% of its gross receipts for the same calendar quarter of 2019.
Qualified Wages

- Paid to employees after March 12, 2020, and before January 1, 2021.
- Depends on the average number of full-time employees employed during 2019.
- Includes qualified health plan costs that are allocable to wages.
Qualified Wages

Wages based on the average number of a business’s employees in 2019.

Employers with less than 100 FT employees:

• The credit is based on wages paid to all employees, regardless of whether they provided services.

Employers with more than 100 FT employees:

• The credit is allowed only for wages paid to employees for the time when they are not providing services.
Calculate the Credit

• Equal to 50% of qualified wages per employee
• Maximum amount of qualified wages per employee for all calendar quarters is $10,000.
• Maximum credit per employee is $5000
Claiming the credit

• Report qualified wages and credits for each calendar quarter on federal employment tax returns.

• Tax credit may be claimed against the employer portion of certain employment taxes.

• If credit exceeds payroll deposit employer may apply for advance refund per Form 7200, Advance Payment of Employer Credits Due To COVID-19.
Impact of other credit provisions

- Small Business Loan – Paycheck Protection Program (PPP)
- Paid Family and Sick Leave Credit – Families First
- Work Opportunity Credit
- Section 45S
Resources

IR-2020-62, March 31, 2020 IRS: Employee Retention Credit available for many businesses financially impacted by COVID-19

FAQs: Employee Retention Credit under the CARES Act

Form 7200, Advance Payment of Employer Credits Due to COVID-19

Relief from Penalty for Failure to Deposit Employment Taxes

Publication 5419
The Families First Coronavirus Response Act (FFCRA)
Disclaimer

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Family First Coronavirus Response Act (FFCRA)

- Signed into law March 18, 2020
  - Emergency Paid Sick Leave Act (EPSLA)
  - Emergency Family and Medical Leave Expansion Act (EFMLEA)

- Effective April 1, 2020

- Expires December 31, 2020

- Enforced by the U.S. Department of Labor Wage and Hour Division (WHD)
FFCRA Requirements

- Coverage
- Employee Eligibility
- Qualifying Reasons for Leave
- Number of Weeks and Hours of Leave Available
- Calculation of Pay
FFCRA – Employer Coverage

• Private Sector
  – Employers of fewer than 500 employees
  – Including not for profit employers

• Public Agencies
  – Regardless of the number of employees they employ
An employee is entitled to take leave if the employee is unable to work or telework because the employee:

- Is subject to a federal, state, or local quarantine or isolation order related to COVID-19,
- Has been advised by a health care provider to self-quarantine related to COVID-19,
- Is experiencing COVID-19 symptoms and is seeking a medical diagnosis,
(Continued) An employee is entitled to take leave if the employee is unable to work or telework because the employee:

- Is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine related to COVID-19,
- Is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons, or
- Is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services
FFCRA - Small Business Exemption

Applies to:

• Small businesses with fewer than 50 employees, AND

• Employee’s leave is to care for his or her child whose school or place of care is closed (or child care provider is unavailable), but only if

• Requirements of the FFCRA jeopardize business viability
FFCRA - Small Business Exemption: Employer Determines

No application process - exemption applies if employer determines:

• Leave would result in expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity

• Employee’s absence would entail a substantial risk to the financial health or operational capabilities of the business because of the employee’s specialized skills, knowledge of the business, or responsibilities; OR

• Insufficient employees able, willing, and qualified at time and place needed to perform labor or services provided by the employee, and these labor or services are needed for business to operate at a minimal capacity.
Employers may exclude employees who are either:

- Health Care Providers, or
- Emergency Responders
Health Care Provider is:
Anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health provider, any facility that performs laboratory or medical testing, pharmacy, OR any similar institution, employer, or entity.
FFCRA - Exclusion of Emergency Responders

**Emergency Responder is:**

- Anyone necessary for transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19.

- Includes military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.
FFCRA - Employer Notice Requirement

- Poster must be conspicuously posted, may be distributed online, posted on employer website, directly mailed or e-mailed to employees
  - Does not have to be visible to job applicants

- DOL Spanish and English FFCRA posters available online at [www.dol.gov/whd](http://www.dol.gov/whd)
  - Translation not required
Emergency Paid Sick Leave Act (EPSLA)

Under the FFCRA
Emergency Paid Sick Leave Act (EPSLA)

Benefit Basics:

- Six qualifying COVID-19 related reasons for job-protected leave
- During leave, continuation of health insurance
- Entitlement to paid sick leave over a 2-week period
  - Full-time employees, based on their schedule, up to 80 hours
  - Part-time employees, hours based on their schedule
EPSLA – Employee Eligibility

• All employees who work for covered employers are eligible
• Covered employers
  – Private sector employer with fewer than 500 employees
  – Public sector employers
• All federal employees are generally eligible for EPSLA leave; however, OMB has authority to exclude certain federal employees
An employee is entitled to take leave under the EPSLA if the employee is unable to work or telework because the employee:

1) Is subject to a federal, state, or local quarantine or isolation order related to COVID-19,

2) Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19,

3) Is experiencing COVID-19 symptoms and seeking a medical diagnosis,
EPSLA – Qualifying Reasons for Leave (Reasons 4 – 6)

(Continued) An employee is entitled to take leave under the EPSLA if the employee is unable to work or telework because the employee:

4) Is caring for an individual subject to a federal, state, or local quarantine or isolation order related to COVID-19, or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19,

5) Is caring for his or her child whose school or place of care is closed (or child provider is unavailable) due to COVID-19 precautions, or

6) Is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services
EPSLA – Required Rate of Pay

The applicable rate of pay is the **highest applicable wage rate**, either the:

- Employee’s regular rate of pay,

- FLSA minimum wage, or

- Highest applicable state or municipal minimum wage
EPSLA – Paid Leave, 100% Calculation (Reasons 1 – 3)

• The employee is due 100% the required rate of pay for leave hours taken because the employee:
  – Is subject to a federal, state, or local quarantine or isolation order related to COVID-19,
  – Has been advised by a health care provider to self-quarantine related to COVID-19, or
  – Is experiencing COVID-19 symptoms and is seeking a medical diagnosis

• Total pay capped at $511 per day or $5,110 in total
EPSLA – Paid Leave, Two-Thirds Calculation (Reasons 4 - 6)

• The employee is due two-thirds of the required rate of pay for leave hours taken because the employee:
  – Is caring for an individual subject to a federal, state, or local quarantine or isolation order related to COVID-19,
  – Is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons, or
  – Is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.
• Total pay capped at $200 per day or $2,000 in total
Emergency Family and Medical Leave Expansion Act (EFMLEA)

Under the FFCRA
Emergency Family and Medical Leave Expansion Act (EFMLEA)

Benefit Basics:

• Employee can only use EFMLEA leave to care for his or her son or daughter whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons
• Up to 12 workweeks of job-protected leave, with continuation of health insurance
• Initial 2 weeks unpaid
• Remaining 10 weeks paid at two-thirds the employee’s regular rate of pay
EFMLEA - Employee Eligibility

All employees, including full-time and part-time employees, of covered employers are eligible for EFMLEA if they have been employed by their employer for at least 30 calendar days.

• Reminders:
  – Private sector employers, including not for profit employers, are covered if they employ fewer than 500 employees
  – Public agencies are covered regardless of the number of employees they employ
  • Federal employee eligibility notes – employees under Title I of the FMLA are eligible under EFMLEA; OMB has authority to exclude certain federal employees
EFMLEA – Unpaid and Paid Leave Periods

• Initial two weeks of EFMLEA leave is “unpaid”
  – Employee may choose to use paid sick leave under the EPSLA, or accrued paid time under their employer benefits package, at the same time as unpaid EFMLEA leave

• Up to 10 weeks paid leave available
  – Hours of leave are paid at two-thirds the employee’s regular rate of pay
  – Employer does not have to pay more than $200 a day or $10,000 total under EFMLEA
• Families First Coronavirus Response Act: Employee Paid Leave Rights - Also available in Spanish
• Families First Coronavirus Response Act: Employer Paid Leave Requirements - Also available in Spanish
• Families First Coronavirus Response Act: Questions and Answers
• Field Assistance Bulletin (FAB) No. 2020-1
• (Poster) Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave under The Families First Coronavirus Response Act (FFCRA) - Also available in Spanish
• Families First Coronavirus Response Act Notice - Frequently Asked Questions
• (Poster) Federal Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave under the Families First Coronavirus Response Act - Also available in Spanish
• WHD-COVID19@dol.gov - Email address for questions
Refundable Tax Credits

- Tax Credits For Paid Sick Leave
- Tax Credits for Paid Family Leave
Paid Sick Leave credit

Eligible employers may claim tax credit if employee is unable to work or telework due to:

- COVID-19 quarantine (pursuant to Federal, State, or local government order or advice of a health care provider)
- COVID-19 symptoms
- COVID-19 medical diagnosis

Eligible employers may claim credit at the employee's regular rate of pay:

- up to $511 per day; $5,110 in total
- for a total of 10 days for this credit
Paid Sick Leave credit (cont’d)

Eligible employers may claim tax credit if employee is unable to work or telework due to:

- caring for someone with COVID-19 or
- caring for a child because the child's school or place of care is closed, or
- child care provider is unavailable due to COVID-19

Eligible employers may claim credit for two-thirds of the employee's regular rate of pay:

- up to $200 per day; $2000 in total
- for a total of 10 days for this credit
Paid Family Leave credit

Eligible employers may receive a refundable family leave credit equal to two-thirds of the employee's regular pay:

- capped at $200 per day or $10,000 in total for 10 weeks

Employer eligible to claim tax credit if employee is unable to work or telework because of a need to:

- care for a child whose school or place of care is closed
- whose child care provider is unavailable due to COVID-19
Paid Leave Refundable Credit

• Qualified paid leave provided between April 1, 2020 and December 31, 2020

• Fully refundable tax credit

• Includes the eligible employer’s share of Medicare tax

• Includes allocable cost of maintaining health insurance coverage
How to claim the credit

Report on quarterly 941

- Wages
- Qualified Health care expense
- Eligible Medicare tax

First reduce federal employment tax deposits

To claim the advance credit, file Form 7200
Recordkeeping

Maintain:

• Records and documents

• Form 941, Employer’s Quarterly Federal Tax Returns

• Form 7200, Advance Payment of Employer Credits Due to COVID-19
Resources

• Coronavirus Tax Relief | Internal Revenue Service
  

• COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs

• https://home.treasury.gov/coronavirus

• DOL Families First Coronavirus Response Act: Questions and Answers
Questions?
Thank You!